

HOUSE REVENUE & TAXATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2006 Legislative Session

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REVENUE & TAXATION

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 571 through 591.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Janice Boyd at (208) 334-7530.

DATED this 2nd day of November, 2005.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

The Following Notice Was Published With The Proposed Rule

REVENUE & TAXATION

STATE TAX COMMISSION
Income Tax Administrative Rules

Docket No. 35-0101-0501
PENDING RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 006: Amend Income Tax Rule 006 to update the publication date of the incorporated document “Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States,” to the new edition.

Rule 050: Promulgate new Income Tax Rule 050 to clarify that LLCs and members will be treated according to their federal classification and that the income tax administrative rules apply in accordance with that federal classification even though LLC and member may not be specifically mentioned in a rule.

Rule 075: Amend Income Tax Rule 075 to add the table for the income tax brackets and rates for calendar year 2005.

Rule 107: Amend Income Tax Rule 107 to correct the references from “Rule 330 and 335” to “Rules 330 through 336” so that all the rules for the definitions of business income and nonbusiness income are referenced.

Rule 108: Amend Income Tax Rule 108 to add information related to the new addback required for general state sales taxes deducted by individuals who include such taxes as itemized deductions. The amendments conform to Idaho Code section 63-3022, as amended in HB 10, passed by the 2005 Legislature.

Rule 120: Amend Income Tax Rule 120 to add information related to the new deduction allowed to taxpayers who restore income under the federal claim of right and who claimed the federal credit instead of the deduction. The amendments conform to new Idaho Code section 63-3022F, enacted in HB 13, passed by the 2005 Legislature.

Rule 121: Amend Income Tax Rule 121 to include sales tax in the information that discusses itemized deductions and the calculations that must be made. The amendments conform to Idaho Code section 63-3022, as amended in HB 10, passed by the 2005 Legislature.

Rule 170: Amend Income Tax Rule 170 to correct the phrase “Idaho taxable income” to “taxable income.” Restructure the rule so that the general information is addressed at the beginning of the rule followed by specific information and examples.

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Income Tax Administrative Rules

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Rule 266: Amend Income Tax Rule 266 to add information on how a nonresident will report the gain or loss from the sale or other disposition of a partnership interest or stock in an S corporation. The amendments conform to Idaho Code section 63-3026A, as amended in HB 25, passed by the 2005 Legislature.

Rule 340: Amend Income Tax Rule 340 to correct the word “contributes” to “contribute” to make the sentence grammatically correct.

Rule 341: Amend Income Tax Rule 341 to clarify that unity can be established under any one of the judicially acceptable tests and cannot be denied merely because another of those tests does not simultaneously apply. Because the rule only discusses one test, the Mobil Oil Corp. v. Vermont “factors of profitability” test, to illustrate how significant flows of value might be used to determine if a unitary business exists, the amendments clarify at the beginning of the rule that unity can be established under any one of the judicially acceptable tests.

Rule 342: Amend Income Tax Rule 342 to correct the word “many” to “may” and to change a semicolon to a period to make the sentence grammatically correct.

Rule 550: Amend Income Tax Rule 550 to provide the exceptions to the general rule that income producing activity for purposes of the sales factor generally does not include transactions and activities performed on behalf of the taxpayer. The amendments provide that income producing activity includes transactions and activities performed on behalf of a taxpayer when the taxpayer sells its product exclusively through independent contractors, when the independent contractors can work only for the taxpayer, or when excluding the transactions and activities of the independent contractors would lead to an unreasonable result. The amendments also provide that only the direct costs paid by the taxpayer are considered.

Rule 570: Amend Income Tax Rule 570 to include the exception to the general rule that alternative apportionment may be required to fairly represent the extent of the taxpayer’s business activity in Idaho even if the income producing activity with respect to business income derived from intangible personal property can be readily identified. Amendments also correct instances where “income” was used in the rule when “gross receipts” should have been.

Rule 620: Amend Income Tax Rule 620 to correct the references from “Rules 330 through 334” to “Rules 330 through 336” so that all the rules for the definitions of business income and nonbusiness income are referenced.

Rule 872: Amend Income Tax Rule 872 to change the due date for paying withholding for employers who are farmers from the last day of February to the last day of January in accordance with Idaho Code section 63-3036, as amended in HB 28, passed by the 2005 Legislature.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

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FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

006. INCORPORATION BY REFERENCE (RULE 006).

These rules incorporate by reference the following documents, which may be obtained from the main office of the Idaho State Tax Commission: (3-15-02)

01. MTC Special Industry Regulations. This document is found in "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," ~~July 27, 2001~~ November 2004 Edition, published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rules 580 and 581 of these rules. (~~5-3-03~~)(____)

02. MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. This document is found in "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," ~~July 27, 2001~~ November 2004 Edition, published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rule 582 of these rules. (~~5-3-03~~)(____)

REVENUE & TAXATION

STATE TAX COMMISSION
Income Tax Administrative Rules

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PENDING RULE

(BREAK IN CONTINUITY OF SECTIONS)

046. -- 07449. (RESERVED).

050. LIMITED LIABILITY COMPANIES (RULE 050).

Section 63-3006A, Idaho Code.

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01. Classification. A limited liability company shall be classified for Idaho income tax purposes the same as classified for federal income tax purposes as provided by the Internal Revenue Code.

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02. Application of Idaho Code and Rules. Idaho income tax laws and administrative rules shall apply according to the applicable classification of the limited liability company. For example, if a limited liability company has elected to be classified for income tax purposes as a partnership, Idaho's income tax administrative rules that apply to partnerships shall also apply to such limited liability company.

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051. -- 074. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).

Section 63-3024, Idaho Code.

(3-20-04)

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate, beginning with calendar year 1987, are identified in Subsection 075.03 of this rule. For taxable years beginning after December 31, 1999, the Idaho income tax brackets are adjusted for inflation. For taxable years beginning on or after January 1, 2003, the maximum tax rate as listed for that taxable year in Subsection 075.03 of this rule shall apply in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules.

(4-6-05)

02. Tax Computation.

(5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns.

(4-6-05)

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household shall be twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual.

(5-3-03)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax would be computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount would then be multiplied by two (2).

(5-3-03)

REVENUE & TAXATION

STATE TAX COMMISSION Income Tax Administrative Rules

Docket No. 35-0101-0501
PENDING RULE

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

a. For taxable years beginning in 1987 through 1999:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,000.00	\$0.00	2% of taxable income
\$1,000.00	\$2,000.00	\$20.00	4% of the amount over \$1,000.00
\$2,000.00	\$3,000.00	\$60.00	4.5% of the amount over \$2,000.00
\$3,000.00	\$4,000.00	\$105.00	5.5% of the amount over \$3,000.00
\$4,000.00	\$5,000.00	\$160.00	6.5% of the amount over \$4,000.00
\$5,000.00	\$7,500.00	\$225.00	7.5% of the amount over \$5,000.00
\$7,500.00	\$20,000.00	\$412.50	7.8% of the amount over \$7,500.00
\$20,000.00 or more		\$1,387.50	8.2% of the amount over \$20,000.00

(3-20-04)

b. For taxable years beginning in 2000:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,022.00	\$0.00	1.9% of taxable income
\$1,022.00	\$2,044.00	\$19.42	3.9% of the amount over \$1,022.00
\$2,044.00	\$3,066.00	\$59.28	4.4% of the amount over \$2,044.00
\$3,066.00	\$4,088.00	\$104.25	5.4% of the amount over \$3,066.00
\$4,088.00	\$5,110.00	\$159.44	6.4% of the amount over \$4,088.00
\$5,110.00	\$7,666.00	\$224.85	7.4% of the amount over \$5,110.00
\$7,666.00	\$20,442.00	\$413.99	7.7% of the amount over \$7,666.00
\$20,442.00 or more		\$1,397.74	8.1% of the amount over \$20,442.00

(3-20-04)

c. For taxable years beginning in 2001:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,056.00	\$0.00	1.6% of taxable income

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PENDING RULE

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$1,056.00	\$2,113.00	\$16.90	3.6% of the amount over \$1,056.00
\$2,113.00	\$3,169.00	\$54.93	4.1% of the amount over \$2,113.00
\$3,169.00	\$4,226.00	\$98.25	5.1% of the amount over \$3,169.00
\$4,226.00	\$5,282.00	\$152.13	6.1% of the amount over \$4,226.00
\$5,282.00	\$7,923.00	\$216.57	7.1% of the amount over \$5,282.00
\$7,923.00	\$21,129.00	\$404.09	7.4% of the amount over \$7,923.00
\$21,129.00 or more		\$1,381.30	7.8% of the amount over \$21,129.00

(3-20-04)

d. For taxable years beginning in 2002:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,087.00	\$0.00	1.6% of taxable income
\$1,087.00	\$2,173.00	\$17.38	3.6% of the amount over \$1,087.00
\$2,173.00	\$3,260.00	\$56.50	4.1% of the amount over \$2,173.00
\$3,260.00	\$4,346.00	\$101.04	5.1% of the amount over \$3,260.00
\$4,346.00	\$5,433.00	\$156.46	6.1% of the amount over \$4,346.00
\$5,433.00	\$8,149.00	\$222.73	7.1% of the amount over \$5,433.00
\$8,149.00	\$21,730.00	\$415.59	7.4% of the amount over \$8,149.00
\$21,730.00 or more		\$1,420.60	7.8% of the amount over \$21,730.00

(3-20-04)

e. For taxable years beginning in 2003:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,104.00	\$0	1.6% of taxable income
\$1,104.00	\$2,207.00	\$17.66	3.6% of the amount over \$1,104.00
\$2,207.00	\$3,311.00	\$57.39	4.1% of the amount over \$2,207.00
\$3,311.00	\$4,415.00	\$102.64	5.1% of the amount over \$3,311.00
\$4,415.00	\$5,518.00	\$158.93	6.1% of the amount over \$4,415.00
\$5,518.00	\$8,278.00	\$226.25	7.1% of the amount over \$5,518.00

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PENDING RULE**

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$8,278.00	\$22,074.00	\$422.16	7.4% of the amount over \$8,278.00
\$22,074.00 or more		\$1,443.06	7.8% of the amount over \$22,074.00

(3-20-04)

f. For taxable years beginning in 2004:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,129.00	\$0	1.6% of taxable income
\$1,129.00	\$2,258.00	\$18.06	3.6% of the amount over \$1,129.00
\$2,258.00	\$3,387.00	\$58.70	4.1% of the amount over \$2,258.00
\$3,387.00	\$4,515.00	\$104.98	5.1% of the amount over \$3,387.00
\$4,515.00	\$5,644.00	\$162.55	6.1% of the amount over \$4,515.00
\$5,644.00	\$8,466.00	\$231.41	7.1% of the amount over \$5,644.00
\$8,466.00	\$22,577.00	\$431.78	7.4% of the amount over \$8,466.00
\$22,577.00 or more		\$1,475.95	7.8% of the amount over \$22,577.00

(4-6-05)

g. For taxable years beginning in 2005:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
<u>At least</u>	<u>But less than</u>	<u>Is</u>	<u>Plus</u>
<u>\$0.00</u>	<u>\$1,159.00</u>	<u>\$0</u>	<u>1.6% of taxable income</u>
<u>\$1,159.00</u>	<u>\$2,318.00</u>	<u>\$18.54</u>	<u>3.6% of the amount over \$1,159.00</u>
<u>\$2,318.00</u>	<u>\$3,477.00</u>	<u>\$60.26</u>	<u>4.1% of the amount over \$2,318.00</u>
<u>\$3,477.00</u>	<u>\$4,636.00</u>	<u>\$107.78</u>	<u>5.1% of the amount over \$3,477.00</u>
<u>\$4,636.00</u>	<u>\$5,794.00</u>	<u>\$166.89</u>	<u>6.1% of the amount over \$4,636.00</u>
<u>\$5,794.00</u>	<u>\$8,692.00</u>	<u>\$237.53</u>	<u>7.1% of the amount over \$5,794.00</u>
<u>\$8,692.00</u>	<u>\$23,178.00</u>	<u>\$443.29</u>	<u>7.4% of the amount over \$8,692.00</u>
<u>\$23,178.00 or more</u>		<u>\$1,515.25</u>	<u>7.8% of the amount over \$23,178.00</u>

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REVENUE & TAXATION

STATE TAX COMMISSION
Income Tax Administrative Rules

Docket No. 35-0101-0501
PENDING RULE

(BREAK IN CONTINUITY OF SECTIONS)

107. ADJUSTMENTS TO TAXABLE INCOME -- ADJUSTMENTS REQUIRED ONLY OF TAXPAYERS REPORTING NONBUSINESS INCOME (RULE 107).

Section 63-3027(a)(4), Idaho Code. All deductions relating to the production of nonbusiness income shall be allocated with the income produced. See Section 63-3027, Idaho Code, and Rules 330 ~~and through 335~~ 336 of these rules for the definitions of business income and nonbusiness income. (5-3-03)(____)

108. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF INDIVIDUALS (RULE 108).

Section 63-3022, Idaho Code. (3-20-97)

01. Lump Sum Distributions. As provided in Section 63-3022(k), Idaho Code, add the taxable amount of a lump sum distribution excluded from taxable income. (3-30-01)

02. Withdrawals From an Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, add the amount of a withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. See Rule 190 of these rules. (7-1-98)

03. Withdrawals From an Idaho College Savings Program. As provided in Section 63-3022(o), Idaho Code, an account owner shall add the amount of any nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code. (3-20-04)

04. Certain Expenses of Eligible Educators. As provided in Section 63-3022O, Idaho Code, an eligible educator as defined in Section 62, Internal Revenue Code, shall add the amount of out-of-pocket classroom expenses deducted as allowed by Section 62, Internal Revenue Code, in computing adjusted gross income. (3-20-04)

05. State and Local Sales Tax. As provided in Section 63-3022(j), Idaho Code, add the amount of state and local general sales taxes deducted as an itemized deduction. (____)

(BREAK IN CONTINUITY OF SECTIONS)

120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (RULE 120).

Section 63-3022, Idaho Code. (3-20-97)

01. State And Local Income Tax Refunds. Subtract from taxable income state and local income tax refunds included in taxable income, unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (3-15-02)

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PENDING RULE

02. Idaho Net Operating Loss. As provided in Section 63-3022(c), Idaho Code, subtract the Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and Rules 200 through 210 of these rules. An S corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss. (7-1-99)

03. Income Not Taxable By Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax, if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

a. Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

b. Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. (4-5-00)

04. Donated Technological Equipment. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, subtract the fair market value of technological equipment donated to qualifying institutions. (4-5-00)

05. Long-Term Care Insurance. As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the amount of the premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer to the extent the premiums have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction was allowed for fifty percent (50%) of the amount of the premiums paid during the taxable year. (4-6-05)

06. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes shall be computed without regard to the special first-year depreciation allowance. (3-20-04)

a. Depreciation. Subtract the amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes. (3-20-04)

b. Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions shall apply in computing the Idaho capital loss allowed.

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STATE TAX COMMISSION Income Tax Administrative Rules

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PENDING RULE

(3-20-04)

i. If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. (3-20-04)

ii. If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, subtract the federal gain and the Idaho loss. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000). (3-20-04)

iii. If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho losses. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200). (3-20-04)

iv. If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars (\$6,000) and an Idaho capital loss of eight thousand dollars (\$8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars (\$3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars (\$2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars (\$1,000) and an Idaho deductible capital loss of three thousand dollars (\$3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income. (3-20-04)

07. Income Restored Under Federal Claim of Right. As provided by Section 63-3022F, Idaho Code, if a taxpayer included an item in Idaho taxable income in a prior taxable year and was later required to restore the item because it was established after the close of the prior taxable year that the taxpayer did not have an unrestricted right to such item or to a portion of the item, such taxpayer shall be allowed a deduction in determining Idaho taxable income if the taxpayer has not otherwise deducted such item in computing his taxable income. The deduction shall be allowed to the extent such deduction would have been allowed to the taxpayer under Section 1341, Internal Revenue Code, had the taxpayer claimed the deduction instead of the recalculation of federal tax, but only to the extent the item was included in Idaho taxable income in the prior taxable year. (____)

121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (RULE 121).

Section 63-3022, Idaho Code. (3-20-97)

01. Income Not Taxable by Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

REVENUE & TAXATION

STATE TAX COMMISSION Income Tax Administrative Rules

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a. Certain income earned by American Indians. See Rule 033 of these rules. (5-3-03)

b. Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho. (3-20-97)

02. Military Compensation for Service Performed Outside Idaho. As provided in Section 63-3022(h), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. (3-30-01)

03. Standard or Itemized Deduction. As provided in Section 63-3022(j), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If itemized deductions are limited pursuant to the Internal Revenue Code, they are also limited for Idaho income tax purposes. (3-30-01)

a. If state and local income or general sales taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they shall be added to taxable income. If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of state and local income or general sales taxes added back shall be computed by dividing the amount of limited itemized deductions by total itemized deductions before the limitation. This percent shall be rounded to the nearest whole percent. For example, sixty-six and one-half percent (66.5%) shall be rounded to sixty-seven percent (67%). Sixty-six and four-tenths percent (66.4%) shall be rounded to sixty-six percent (66%). This percent is then applied to state and local income or general sales taxes to determine the Idaho state and local income and general sales tax addback. See Rule 105 of these rules. (~~3-15-02~~)()

b. If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. (7-1-99)

c. For taxable year 1999 the standard deduction allowed on a married filing joint return shall be increased by one hundred fifty dollars (\$150). (3-30-01)

d. For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return shall be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. (3-30-01)

04. Social Security and Railroad Retirement Benefits. As provided in Section

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63-3022(l), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. (3-30-01)

a. The term social security benefits includes United States social security benefits and Canadian social security pensions received by a United States resident that are treated as United States social security benefits for United States income tax purposes. (7-1-99)

b. The term certain railroad retirement benefits means the following amounts paid by the Railroad Retirement Board: (4-6-05)

i. Annuities, supplemental annuities, and disability annuities, including the Tier I social security equivalent benefits, and the Tier II pension amounts; (4-6-05)

ii. Railroad unemployment; and (4-6-05)

iii. Sickness benefits. (4-6-05)

05. Self-Employed Worker's Compensation Insurance Premiums. As provided in Section 63-3022(m), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. (3-30-01)

06. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. (3-20-97)

07. Insulation of an Idaho Residence. As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the insulation of an Idaho residence. (3-20-97)

08. Alternative Energy Devices. As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence. (3-20-97)

09. Household and Dependent Care Services. As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. (3-20-97)

10. Household Deduction for Elderly or Developmentally Disabled Dependents. As provided in Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. (3-20-97)

11. Reparations to Displaced Japanese Americans. As provided in Section 63-

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3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. (3-20-97)

12. Capital Gains. As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified property. (3-20-97)

13. Adoption Expenses. As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. (3-20-97)

14. Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to and interest earned on an Idaho medical savings account. (4-5-00)

15. Idaho College Savings Program. As provided in Section 63-3022(n), Idaho Code, a deduction from taxable income is allowed for qualifying contributions to a college savings program. (3-15-02)

16. Health Insurance Costs. A deduction from taxable income is allowed for the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care, as defined in Section 63-3022P, Idaho Code, for the taxpayer, the spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

170. IDAHO CAPITAL GAINS DEDUCTION -- IN GENERAL (RULE 170).
Section 63-3022H, Idaho Code. (3-20-97)

01. Qualifying for the Idaho Capital Gains Deduction. To qualify for the Idaho capital gains deduction, a taxpayer must report capital gain net income, as defined in Section 1222(9), Internal Revenue Code, on his federal income tax return. ()

02. Capital Gain Net Income Limitation. ()

a. The Idaho capital gains deduction may not exceed the capital gain net income included in taxable income. ()

b. Example. A taxpayer recognizes a capital gain of five thousand dollars (\$5,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock. These are the only sales during the taxable year. Sixty percent (60%) of the capital gain net income from qualified property is greater than the capital gain net income included in the taxpayer's taxable

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income. Therefore, the taxpayer's Idaho capital gains deduction is limited to the capital gain net income included in taxable income of two thousand five hundred dollars (\$2,500), not sixty percent (60%) of the capital gain net income from the qualified property. For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, limited to the capital gain net income included in taxable income. ()

03. Ordinary Income Limitation. The Idaho capital gains deduction may not include any gains treated as ordinary income pursuant to the Internal Revenue Code. For example, any gain from the sale, exchange, or involuntary conversion of certain depreciable property treated as ordinary income pursuant to Section 1245, Internal Revenue Code, may not be included when computing the Idaho capital gains deduction. ()

044. Losses From Nonqualified Property. Losses from property not qualifying for the Idaho capital gains deduction may not be netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. ~~However, the Idaho capital gains deduction may not exceed the capital gain net income included in Idaho taxable income. See Subsection 170.04 for an explanation of the capital gain net income limitation.~~ (3-15-02)()

025. Losses From Qualified Property. (7-1-99)

a. Losses from property qualifying for the Idaho capital gains deduction shall be netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. (7-1-99)

b. A capital loss carryover from property qualifying for the Idaho capital gains deduction shall be netted against current year gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. If a taxpayer has a capital loss carryover consisting of qualified and nonqualified property, the qualified capital loss carryover shall be the proportion that the qualified capital loss bears to the total capital loss shown on the return in the prior year multiplied by the capital loss carryover. (7-1-99)

036. Examples. (3-20-97)

a. A taxpayer sells two (2) parcels of Idaho real property that qualify for the deduction. These are the only sales during the taxable year. A capital gain of seven thousand five hundred dollars (\$7,500) is recognized on the sale of Parcel A. A capital loss of five thousand dollars (\$5,000) is recognized on the sale of Parcel B. Since both parcels are qualified property, the gain and loss are netted, resulting in capital gain net income from qualified property of two thousand five hundred dollars (\$2,500). For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or two thousand dollars (\$2,000). After 2001, the capital gains deduction returns to sixty percent (60%) or one thousand five hundred dollars (\$1,500). (5-3-03)

b. A taxpayer recognizes a capital gain of twenty thousand dollars (\$20,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock that he has held for more than one (1) year. These are the only sales during the taxable year. In this case, since the

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long-term capital loss is not from qualified property, the loss on the sale of stock does not reduce the gain from qualified property for purposes of computing the deduction. The entire gain from qualified property of twenty thousand dollars (\$20,000) is eligible for the Idaho capital gains deduction. For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or sixteen thousand dollars (\$16,000). After 2001, the capital gains deduction returns to sixty percent (60%) or twelve thousand dollars (\$12,000). (5-3-03)

~~04. Capital Gain Net Income Limitation.~~ (3-15-02)

~~a. The Idaho capital gains deduction is allowed only if the taxpayer reports capital gain net income, as defined in Section 1222(9), Internal Revenue Code, on his federal income tax return. In addition, the Idaho capital gains deduction may not exceed the capital gain net income included in taxable income.~~ (3-15-02)

~~b. Example. A taxpayer recognizes a capital gain of five thousand dollars (\$5,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock. These are the only sales during the taxable year. Sixty percent (60%) of the capital gain net income from qualified property is greater than the capital gain net income included in the taxpayer's taxable income. Therefore, the taxpayer's Idaho capital gains deduction is limited to the capital gain net income included in taxable income of two thousand five hundred dollars (\$2,500), not sixty percent (60%) of the capital gain net income from the qualified property. For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property. This deduction is also limited to the capital gain net income included in Idaho taxable income.~~ (5-3-03)

~~05. Ordinary Income Limitation. The Idaho capital gains deduction may not include any gains treated as ordinary income pursuant to the Internal Revenue Code. For example, any gain from the sale, exchange, or involuntary conversion of certain depreciable property treated as ordinary income pursuant to Section 1245, Internal Revenue Code, may not be included when computing the Idaho capital gains deduction.~~ (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

266. INCOME FROM INTANGIBLE PROPERTY (RULE 266).

Section 63-3026A(3), Idaho Code.

(7-1-99)

01. In General. Gross income from intangible property generally is sourced to the state of the owner's domicile. ~~There following are three (3) exceptions to this rule.~~ (7-1-99)(____)

a. If the intangible property is employed in the owner's trade, business or profession carried on within Idaho, any income derived from or related to the property, including gains from the sale thereof, constitutes income from Idaho sources. For example, if a nonresident pledges stocks, bonds or other intangible personal property as security for the payment of indebtedness

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incurred in connection with the nonresident's Idaho business operations, the intangible property has an Idaho situs and the income derived therefrom constitutes Idaho source income. (7-1-99)

b. Interest income from the sale of real or tangible personal property on the installment method is treated as income from the sale of the underlying property and is therefore sourced to Idaho if the underlying property was located in Idaho when sold. (7-1-99)

c. Interest income paid by an S corporation to a shareholder or by a partnership to a partner is sourced to Idaho in proportion to the Idaho apportionment factor of the partnership or S corporation. (7-1-99)

d. Gains or losses from the sale or other disposition of a partnership interest or stock in an S corporation are sourced to Idaho by using the Idaho apportionment factor for the entity for the taxable year immediately preceding the year of the sale of the interest or stock. ()

02. Interest Income Earned on a Bank Account. (7-1-99)

a. Personal Bank Accounts. Interest income earned on a personal bank account is sourced to the owner's state of domicile. A personal bank account is an account that is not used in connection with a business. (7-1-99)

b. Business Bank Accounts. If the business is a sole proprietorship, see Rule 265 of these rules. If the business is an S corporation or partnership, see Rule 263 of these rules. (7-1-99)

03. Covenant Not to Compete. Income from a covenant not to compete is sourced to the owner's state of domicile unless the covenant was employed in the owner's business, trade, profession or occupation conducted or carried on in Idaho as described in Subsection Paragraph 266.01.a. of this rule. ~~(7-1-99)~~()

(BREAK IN CONTINUITY OF SECTIONS)

340. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- UNITARY BUSINESS PRINCIPLE (RULE 340).

Section 63-3027, Idaho Code. (4-6-05)

01. The Concept of a Unitary Business. (4-6-05)

a. A unitary business is a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This flow of value to a business entity located in Idaho that comes from being part of a unitary business conducted both within and without Idaho is what provides the constitutional due process "definite link and minimum connection" necessary for Idaho to apportion business income of the unitary business, even if that income

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arises in part from activities conducted outside Idaho. The business income of the unitary business is then apportioned to Idaho using an apportionment percentage provided by Section 63-3027, Idaho Code. (4-6-05)

b. This sharing or exchange of value may also be described as requiring that the operation of one (1) part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one (1) business either contribute to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business. ~~(4-6-05)~~()

02. Constitutional Requirement for a Unitary Business. (4-6-05)

a. The sharing or exchange of value described in Subsection 340.01 of this rule that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business. (4-6-05)

b. In Idaho, the unitary business principle shall be applied to the fullest extent allowed by the U.S. Constitution. The unitary business principle shall not be applied to result in the combination of business activities or entities under circumstances where, if it were adverse to the taxpayer, the combination of such activities or entities would not be allowed by the U.S. Constitution. (4-6-05)

03. Separate Trades or Businesses Conducted Within a Single Entity. A single entity may have more than one (1) unitary business. In such cases it is necessary to determine the business, or apportionable, income attributable to each separate unitary business as well as its nonbusiness income, which is specifically allocated. The business income of each unitary business is then apportioned by a formula that takes into consideration the in-state and the out-of-state factors that relate to the respective unitary business whose income is being apportioned. (4-6-05)

04. Unitary Business Unaffected by Formal Business Organization. A unitary business may exist within a single business entity or among a commonly controlled group of business entities. The relationship shall be determined by reference to the relationship that exists between all related and affiliated corporations, not just those corporations whose income and apportionment factors are required to be considered. For example, the relationship with foreign affiliates shall be considered even though a water's edge election is made. A related corporation may include insurance companies and fifty percent (50%) or less owned corporations. The scope of what is included in a commonly controlled group of business entities is set forth in Rule 344 of these rules. (4-6-05)

341. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- DETERMINATION OF A UNITARY BUSINESS (RULE 341).

Section 63-3027, Idaho Code. ()

01. In General. Unity can be established under any one (1) of the judicially acceptable tests (Butler Brothers, Edison California Stores, Container, etc.), and cannot be denied merely because another of those tests does not simultaneously apply. ()

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02. Significant Flows of Value. A unitary business is characterized by significant flows of value evidenced by factors such as those described in *Mobil Oil Corp. v. Vermont*, 445 U.S. 425 (1980): functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular business operation may be suggestive of one (1) or more of the factors mentioned above. (4-6-05)(____)

342. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- DESCRIPTION AND ILLUSTRATION OF FUNCTIONAL INTEGRATION, CENTRALIZATION OF MANAGEMENT AND ECONOMIES OF SCALE (RULE 342).

Section 63-3027, Idaho Code.

(4-6-05)

01. Functional Integration. Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes, but is not limited to, transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that can support the finding of functional integration. The order of the list does not establish a hierarchy of importance. (4-6-05)

a. Sales, exchanges, or transfers (collectively "sales") of products, services, or intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold and the percentage of total sales or purchases represented by the intercompany sales. For example, sales among business entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to effect the intercompany sales, because such sales can represent an assured market for the seller or an assured source of supply for the purchaser. (4-6-05)

b. Common Marketing. The sharing of common marketing features among business entities is an indication of functional integration when such marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the business entities' products, services, or intangibles are distributed or sold to a common customer, when the business entities use a common trade name or other common identification, or when the business entities seek to identify themselves to their customers as a member of the same enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. (Such activity, however, is relevant to determining the existence of economies of scale and centralization of management.) (4-6-05)

c. Transfer or Pooling of Technical Information or Intellectual Property. Transfers or

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pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provide evidence of functional integration when the matter transferred is significant to the businesses' operations. (4-6-05)

d. Common Distribution System. Use of a common distribution system by the business entities, under which inventory control and accounting, storage, trafficking, or transportation are controlled through a common network provides evidence of functional integration. (4-6-05)

e. Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the business entities, particularly where the purchasing results in significant cost savings or where products, services, or intangibles are not readily available from other sources and are significant to each entity's operations or sales, provides evidence of functional integration. (4-6-05)

f. Common or Intercompany Financing. Significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one (1) or more business entities for the benefit of another business entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending which serves an investment purpose of the lender does not necessarily provide evidence of functional integration. (See Subsection 342.02 of this rule for discussion of centralization of management.) (4-6-05)

02. Centralization of Management. Centralization of management exists when directors, officers, or other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one (1) subsidiary entity to another, from one (1) division within a single business entity to another division within a business entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect to the business activities. An operational role can be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management. (4-6-05)

a. Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management ~~many~~ may exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors. (4-6-05)()

b. Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities

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that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one (1) or more significant operating aspects of one (1) business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight. ~~(4-6-05)~~()

03. Economies of Scale. Economies of scale refers to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that can support the finding of economies of scale. The order of the list does not establish a hierarchy of importance. (4-6-05)

a. Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale. (4-6-05)

b. Centralized Administrative Functions. The performance of traditional corporate administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. A business entity that secures savings in the performance of corporate administrative services due to its affiliation with other business entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market, provides evidence of economies of scale. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

550. SALES FACTOR -- SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN IDAHO (RULE 550).

Section 63-3027(r), Idaho Code. (3-20-97)

01. In General. Section 63-3027(r), Idaho Code, provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property, including transactions with the United States Government. Gross receipts are attributed to Idaho if the income producing activity that generates the receipts is performed wholly within Idaho. Also, gross receipts are attributed to Idaho if, with respect to a particular item of income, the income producing activity is performed within and without Idaho but the greater part of the income producing activity is performed in Idaho, based on costs of performance. (3-20-97)

02. Income Producing Activity. The term income producing activity applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains

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or profit. The activity generally does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. However, income producing activity shall include transactions and activities performed on behalf of a taxpayer when the taxpayer sells its product exclusively through independent contractors, when the independent contractors can only work for the taxpayer, or when excluding the transactions and activities of the independent contractors would lead to an unreasonable result. Income producing activity includes the following: ~~(3-20-97)~~()

- a. The rendering of personal services by employees or the use of tangible and intangible property by the taxpayer in performing a service; (3-20-97)
- b. The sale, rental, leasing, licensing or other use of real property; (3-20-97)
- c. The rental, leasing, licensing or other use of tangible personal property; (3-20-97)
- d. The sale, licensing or other use of intangible personal property; and (3-20-97)
- e. The mere holding of intangible personal property is not, by itself, an income producing activity. (3-20-97)

03. Costs of Performance. Costs of performance are the direct costs determined according to generally accepted accounting principles and accepted conditions or practices of the taxpayer's trade or business. Only the direct costs paid by the taxpayer shall be considered. ~~(3-20-97)~~()

04. Application. In general, receipts, other than from sales of tangible personal property, in respect to a particular income producing activity are in Idaho if: (3-20-97)

- a. The income producing activity is performed wholly in Idaho; or (3-20-97)
- b. The income producing activity is performed both within and without Idaho and a greater part of the income producing activity is performed in Idaho than in any other state, based on costs of performance. (3-20-97)

05. Special Rules. The following are rules and examples for determining when receipts from the income producing activities described below are in Idaho: (3-20-97)

- a. Gross receipts from the sale, lease, rental or licensing of real property are in Idaho if the real property is located in Idaho. (3-20-97)
- b. Gross receipts from the rental, lease or licensing of tangible personal property are in Idaho if the property is located in Idaho. The rental, lease, licensing or other use of tangible personal property in Idaho is a separate income producing activity from the rental, lease, licensing or other use of the same property while in another state. Consequently, if property is within and without Idaho during the rental, lease or licensing period, gross receipts attributable to Idaho shall be measured by the ratio that the time the property was present or used in Idaho bears to the total time or use of the property everywhere during the period. (3-20-97)

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c. Example. A taxpayer owns ten (10) bulldozers. During the year, each bulldozer was in Idaho fifty (50) days. The receipts attributable to the use of each bulldozer in Idaho are separate items of income and are determined as follows: ((ten (10) bulldozers x fifty (50) days) / (ten (10) bulldozers x three hundred sixty five (365) days)) x total receipts = receipts attributable to Idaho. (3-20-97)

d. Gross receipts for the performance of personal services are attributable to Idaho to the extent the services are performed in Idaho. If services relating to a single item of income are performed within and without Idaho, they are attributable to Idaho only if a greater portion of the services were performed in Idaho, based on costs of performance. Usually if services are performed within and without Idaho, they constitute a separate income producing activity. In this case the gross receipts attributable to Idaho are measured by the ratio that the time spent in performing the services in Idaho bears to the total time spent in performing the services everywhere. Time spent in performing services includes the time spent in performing a contract or other obligation that generates the gross receipts. This computation does not include personal service not directly connected with the performance of the contract or other obligation, as for example, time spent in negotiating the contract. (3-20-97)

e. Example. The taxpayer, a road show, gave theatrical performances at various location in State X and in Idaho during the tax period. All gross receipts from performances given in Idaho are attributed to Idaho. (3-20-97)

f. Example. The taxpayer, a public opinion survey corporation, conducted a poll in State X and in Idaho for the sum of nine thousand dollars (\$9,000). The project required six hundred (600) man hours to obtain the basic data and prepare the survey report. Two hundred (200) of the six hundred (600) man hours were expended in Idaho. The receipts attributable to Idaho are three thousand dollars (\$3,000): (200 man hours/600 man hours) x \$9,000. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

570. SPECIAL RULES -- SALES FACTOR (RULE 570).

Section 63-3027(s), Idaho Code.

(3-20-97)

01. **De Minimis Gross Receipts.** Minimal amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to Idaho. (3-20-97)

02. **Gross Receipts From Intangibles.** (3-20-97)

a. If the income producing activity in respect to business income from intangible personal property can be readily identified, the ~~income is~~ gross receipts shall be included in the denominator of the sales factor and, if the income producing activity occurs in Idaho, in the numerator of the sales factor as well. ~~For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Rule 525 of these rules, and income from the sale, licensing or other use of~~

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~~intangible personal property, see Rule 550 of these rules.~~

~~(3-20-97)()~~

b. If business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the ~~income cannot be assigned to the numerator of the sales factor for any state and~~ gross receipts shall be excluded from the denominator and numerator of the sales factor. For example, if business income in the form of dividends received on stock, royalties received on patents or copyrights, and interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends, royalties and interest shall be excluded from the denominator and numerator of the sales factor.

~~(3-30-01)()~~

c. Subsection 570.02 of this rule is not intended to limit the ability of the Tax Commission to allow or require alternative apportionment when appropriate to fairly represent the extent of the taxpayer's business activity in this state. As a result, alternative apportionment may be allowed or required even if the income producing activity with respect to business income derived from intangible personal property can be readily identified.

()

03. Net Gains. If gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions of this rule, such gains or losses shall be treated as provided in Subsection 570.03 of this rule. This subsection does not provide rules relating to the treatment of other receipts produced from holding or managing such assets. If a taxpayer holds liquid assets in connection with one (1) or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of Subsection 570.03 of this rule, each treasury function shall be considered separately.

~~(4-5-00)()~~

a. For purposes of Subsection 570.03 of this rule, a liquid asset is an asset, other than functional currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include foreign currency, and trading positions therein, other than functional currency used in the regular course of the taxpayer's trade or business; marketable instruments, including stocks, bonds, debentures, bills, notes, options, warrants, futures contracts; and mutual funds which hold such liquid assets. An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation that is unitary with the taxpayer or has a substantial business relationship with the taxpayer is not considered marketable stock.

~~(4-5-00)()~~

b. For purposes of Subsection 570.03 of this rule, a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and providing for business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

~~(4-5-00)()~~

c. Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

(4-5-00)

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d. Examples. (4-5-00)

i. A taxpayer manufactures various gift items. Because of seasonal variations, the taxpayer must keep liquid assets available for later inventory acquisitions. Because the taxpayer wants to obtain a return on available funds, the taxpayer acquires liquid assets, which are held and managed in State A. The net gain resulting from all gains and losses on the sale of the liquid assets for the tax year will be reflected in the denominator of the sales factor and in the numerator of State A. (4-5-00)

ii. A stockbroker acts as a dealer or trader for its own account in its ordinary course of business. Some of the instruments sold are liquid assets. Subsection 570.03 of this rule does not operate to classify those sales as attributable to a treasury function. ~~(4-5-00)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

620. ATTRIBUTING INCOME OF CORPORATIONS THAT ARE MEMBERS OF PARTNERSHIPS (RULE 620).

Section 63-3027, Idaho Code. (3-20-97)

01. In General. If a corporation required to file an Idaho income tax return is a member of an operating partnership, the corporation shall report its Idaho taxable income, including its share of income from the partnership, in accordance with this rule. For purposes of this rule, the term partnership includes a joint venture. (3-20-97)

02. Transacting Business. A corporation is transacting business in Idaho if it is a partner in a partnership that is transacting business in Idaho even though the corporation has no other contact with Idaho. In this case, both the partnership and the corporation have an Idaho filing requirement. (3-20-97)

03. Multistate Partnerships. If a partnership operates in more than one state, its income shall be apportioned and allocated on the partnership return as if the partnership were a corporation. The allocation and apportionment rules of Section 63-3027, Idaho Code, and related rules apply to the partnership. (3-20-97)

04. Partnership Income as Business Income of the Partner. (3-20-97)

a. Income. If the income or loss of a partnership is business income or loss to a corporate partner, its share of this net business income or loss shall be apportioned together with all other net business income or loss of the corporation. Business income or loss is defined by Section 63-3027(a)(1), Idaho Code, and Rules 330 through ~~334~~336 of these rules. ~~(3-20-97)~~(____)

b. Factors. A corporate partner's share of the partnership property, payroll, and sales after intercompany eliminations, shall be included in the numerators and the denominators of the partner's property, payroll, and sales factors when computing its apportionment formula. The

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partner's share of the partnership's property, payroll, and sales is determined by attributing the partnership's property, payroll, and sales to the partner in the same proportion as its distributive share of partnership income if reporting net income for the taxable year or in the same proportion as its distributive share of partnership losses if reporting a net loss for the taxable year. Generally, the partnership's property, payroll, and sales includable in the corporation's factor computations is determined in accordance with Section 63-3027, Idaho Code, and related rules. To determine how the sales attribution rules of Section 63-3027(q), Idaho Code, apply to the sales factor of the corporate partner, the sales of the partnership are treated as if they were sales of the corporation.

(3-30-01)

05. Partnership Income as Nonbusiness Income of Partner. (3-20-97)

a. Income. If the partnership income or loss is not business income to a corporate partner, the income is nonbusiness income as defined in Section 63-3027(a)(4), Idaho Code, and Rules 335 through 339 of these rules. The corporate partner shall allocate the nonbusiness income to the state in which it was earned. The corporate partner, on its Idaho corporation income tax return, shall specifically allocate to Idaho its share of the nonbusiness income attributable to Idaho.

(3-20-97)

b. Factors. If the partnership income or loss is nonbusiness income to the corporate partner, none of the partnership property, payroll, or sales may be included in the computation of the factors of the corporation.

(3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).

Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

01. Payment of State Income Tax Withheld. (4-6-05)

a. In General. An employer shall remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe six hundred dollars (\$600) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter.

(4-6-05)

b. Split-Monthly Filers. (4-6-05)

i. An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, shall remit the tax withheld based on split-monthly withholding periods. Split-monthly withholding periods begin with the 16th day of the month and end on the 15th day of the following month. Payments for a split-monthly withholding period shall be made no later than five (5) days after the end of the withholding period.

(4-6-05)

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- ii. Threshold amounts:

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
Prior to January 1, 2004	\$5,000.00	\$60,000.00
On or After January 1, 2004, but Before July 1, 2005	\$6,000.00	\$72,000.00
On or After July 1, 2005	\$20,000.00	\$240,000.00

(4-6-05)

- iii. Filing status changes will occur only in January.

(4-6-05)

c. Farmer-Employers. Generally an employer who is a farmer shall remit state income tax withheld on or before the last day of ~~February~~ January. However, an employer who is a farmer shall remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor.

(4-6-05)(____)

02. Filing of Annual Reconciliation Returns.

(4-6-05)

a. In General. Beginning January 1, 2004, an employer shall file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return shall:

(4-6-05)

- i. Report payroll paid during the preceding calendar year; and

(4-6-05)

ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year.

(4-6-05)

b. Due Date of Reconciliation Returns. The annual reconciliation return shall be filed on or before the last day of January. The Tax Commission may require a shorter filing period and due date.

(4-6-05)

c. Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return shall be completed and filed by the due date.

(4-6-05)

03. Extension of Time to Pay or File Returns. The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual reconciliation return.

(4-6-05)

a. The employer shall file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment shall be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of

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the prior year. (4-6-05)

b. The employer shall file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request shall be shown on the payment line of the return. Interest from the due date applies to any additional tax due. (4-6-05)

04. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule shall be filed using the proper forms as prescribed by the Tax Commission. The forms shall include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (3-20-97)

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IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-0502

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The proposed Rule 275 has been amended from the proposed text in Section 275.03 to more clearly define investments in securities and add a provision to exclude investments that are not passive investments from the exemption for investment income.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 592 and 593.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Janice Boyd at (208) 334-7530.

DATED this 2nd day of November, 2005.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

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PENDING RULE

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 275: Promulgate new Income Tax Rule 275 to address qualifying entities and what investment in securities and activities incident thereto includes in accordance with Idaho Code section 63-3026A, as amended in HB 400, passed by the 2005 Legislature.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Janice Boyd
Tax Policy Specialist

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Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

273. -- 2794. (RESERVED).

275. INCOME FROM INTANGIBLE PROPERTY OF INVESTMENT PARTNERSHIPS (RULE 275).

Section 63-3026A(3)(c), Idaho Code. ()

01. In General. ()

a. For taxable years beginning on or after January 1, 2001, investment income from securities received from a qualifying entity described in Subsection 275.02 of this rule shall be deemed to be derived from or related to a source in the partner's or member's state of domicile. This income shall be deemed to be derived from or related to a source in Idaho if the partner or member is domiciled in Idaho or is residing in Idaho when the income is received. See Rule 250 of these rules for information on when pass-through income from a partnership is deemed to have been received. ()

b. This rule shall not apply to gains or losses derived from the sale of an interest in a partnership. The source of these gains and losses is to be governed by Section 63-3026A(3)(a)(vii), Idaho Code, and as discussed in Rule 266 of these rules. The source of investment income that is not from a qualifying entity shall be determined as provided in Rule 263 of these rules. ()

02. Qualifying Entity. ()

a. A qualifying entity includes only an entity that is taxed as a partnership for federal income tax purposes. ()

b. The business activity of a qualifying entity must be limited to investment in securities and activities incident thereto. If the entity is involved in any other business activity not related to the securities investment activities, the entity is not a qualifying entity for purposes of Section 63-3026(A)(3)(c) and the source of income from such entity shall be determined pursuant to Rule 263 of these rules. Activities incident thereto shall include only those activities that would be usual and customary in the securities investment business and that contribute to the earning of the investment income. ()

03. Investment in Securities. For purposes of this rule: ()

a. Investment in securities shall include *any stock, bond, commodity, future, derivative, foreign currency, or similar financial product.* ()

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b. Investment in securities and activities incident thereto shall not include *the purchase or sale of real or tangible personal property, or any installment note received from the sale of real or tangible personal property.* ()

c. Activities incident thereto shall include those activities that are usual and customary to the business of investing in securities including: maintaining accounts for individual investors, soliciting applications from new investors, record keeping and storage, maintaining bank accounts for liquid assets and disbursing profits to investors, research and evaluation of investment opportunities and results, and the maintenance of an office in Idaho *for such activities.* ()

d. *Investment in securities and activities incident thereto shall include only investments that are passive investments. For purposes of this rule, investments are not passive investments where one (1) or more investors in the entity taxed as a partnership exercises direct or indirect control over the operation of a business entity from which the income received by the entity taxed as a partnership is derived.* ()

276. -- 279. (RESERVED).

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IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-0503

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 594 through 613.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Janice Boyd at (208) 334-7530.

DATED this 2nd day of November, 2005.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

The Following Notice Was Published With The Proposed Rule

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AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 799: Amend Income Tax Rule 799 to add to the list of priority of credits the new credits allowed by HBs 306 and 323, which were passed by the 2005 Legislature, and to address adjustments to credits.

Rule 920: Promulgate new Income Tax Rule 920 to provide definitions for rules relating to the Idaho Corporate Headquarters Incentive Act of 2005.

Rule 921: Promulgate new Income Tax Rule 921 to discuss the coordination of the Idaho Corporate Headquarters Incentive Act with the Idaho Small Employer Incentive Act of 2005, pass-through entities, the effects of reorganizations, mergers and liquidations, relocations of facilities, and unitary sharing.

Rule 922: Promulgate new Income Tax Rule 922 to discuss the Idaho Corporate Headquarters tax incentive criteria and the certification requirements.

Rule 923: Promulgate new Income Tax Rule 923 to discuss the Idaho Corporate Headquarters Investment Tax Credit, including when the credit is allowed, qualifying taxpayers, qualified investments, limitations, carryovers, and coordination with the investment tax credit allowed by Idaho Code section 63-3029B.

Rule 924: Promulgate new Income Tax Rule 924 to discuss the Idaho Corporate Headquarters Real Property Improvement Tax Credit, including when the credit is allowed, qualifying taxpayers, qualifying buildings and structural components, limitations, and carryovers.

Rule 925: Promulgate new Income Tax Rule 925 to discuss the Idaho Corporate Headquarters New Jobs Tax Credit, including when the credit is allowed, qualifying taxpayers, calculating the number of employees and the number of new employees, how to compute the credit, limitations, and carryovers.

Rule 926: Promulgate new Income Tax Rule 926 to discuss recapture of the Corporate Headquarters tax incentives, including the failure to meet the tax incentive criteria, the year the deficiency occurs, early dispositions of investment in new plant, failure to maintain

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increased employment, and the effects of reorganizations, mergers, and liquidations.

Rule 930: Promulgate new Income Tax Rule 930 to provide definitions for rules relating to the Idaho Small Employer Incentive Act of 2005.

Rule 931: Promulgate new Income Tax Rule 931 to discuss the coordination of the Idaho Small Employer Incentive Act with the Idaho Corporate Headquarters Incentive Act of 2005, pass-through entities, the effects of reorganizations, mergers and liquidations, relocations of facilities, and unitary sharing.

Rule 932: Promulgate new Income Tax Rule 932 to discuss the Idaho Small Employer tax incentive criteria and the certification requirements.

Rule 933: Promulgate new Income Tax Rule 933 to discuss the Idaho Small Employer Investment Tax Credit, including when the credit is allowed, qualifying taxpayers, qualified investments, limitations, carryovers, and coordination with the investment tax credit allowed by Idaho Code section 63-3029B.

Rule 934: Promulgate new Income Tax Rule 934 to discuss the Idaho Small Employer Real Property Improvement Tax Credit, including when the credit is allowed, qualifying taxpayers, qualifying buildings and structural components, limitations, and carryovers.

Rule 935: Promulgate new Income Tax Rule 935 to discuss the Idaho Small Employer New Jobs Tax Credit, including when the credit is allowed, qualifying taxpayers, calculating the number of employees and the number of new employees, how to compute the credit, limitations, and carryovers.

Rule 936: Promulgate new Income Tax Rule 936 to discuss recapture of the Idaho Small Employer tax incentives, including the failure to meet the tax incentive criteria, the year the deficiency occurs, early dispositions of investment in new plant, failure to maintain increased employment, and the effects of reorganizations, mergers, and liquidations.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

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DATED this 24th day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

799. PRIORITY ORDER OF CREDITS AND ADJUSTMENTS TO CREDITS (RULE 799).

Section 63-3029P, Idaho Code. (5-3-03)

01. Tax Liability. Tax liability is the tax imposed by Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. (3-20-97)

02. Nonrefundable Credits. A nonrefundable credit is allowed only to reduce the tax liability. A nonrefundable credit not absorbed by the tax liability is lost unless the statute authorizing the credit includes a carryover provision. Nonrefundable credits apply against the tax liability in the following order of priority: (3-20-97)

a. Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; (3-20-97)

b. For part-year residents only, the grocery credit as authorized by Section 63-3024A, Idaho Code; (5-3-03)

c. Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; (3-20-97)

d. Investment tax credit as authorized by Section 63-3029B, Idaho Code; (3-20-97)

e. Credit for contributions to Idaho youth facilities, rehabilitation facilities, and nonprofit substance abuse centers as authorized by Section 63-3029C, Idaho Code; (3-30-01)

f. Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code; (3-30-01)

g. Promoter-sponsored event credit as authorized by Section 63-3620C, Idaho Code; (3-15-02)

h. Credit for qualifying new employees as authorized by Sections 63-3029E and 63-3029F, Idaho Code; (3-15-02)

i. Credit for Idaho research activities as authorized by Section 63-3029G, Idaho Code; (3-15-02)

j. Broadband equipment investment credit as authorized by Section 63-3029I, Idaho Code; and (3-15-02)

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- k.** Incentive investment tax credit as authorized by Section 63-3029J, Idaho Code. (3-15-02)
- l.** Corporate headquarters investment tax credit as authorized by Section 63-2903, Idaho Code. ()
- m.** Corporate headquarters real property improvement tax credit as authorized by Section 63-2904, Idaho Code. ()
- n.** Corporate headquarters new jobs tax credit as authorized by Section 63-2905, Idaho Code. ()
- o.** Small employer investment tax credit as authorized by Section 63-4403, Idaho Code. ()
- p.** Small employer real property improvement tax credit as authorized by Section 63-4404, Idaho Code. ()
- q.** Small employer new jobs tax credit as authorized by Section 63-4405, Idaho Code. ()
- 03.** **Adjustments to Credits.** ()
- a.** Adjustments to the amount of a credit earned shall be determined pursuant to the law applicable to the taxable year in which the credit was earned. ()
- b.** Adjustments to the amount of a credit earned may be made even though the taxable year in which the credit was earned is closed due to the statute of limitations. Such adjustments to the earned credit shall also apply to any taxable years to which the credit was carried over. ()
- c.** If the taxable year in which the credit was earned or carried over to is closed due to the statute of limitations, any adjustments to the credit earned shall not result in any tax due or refund for the closed taxable years. However, the adjustments may result in tax due or a refund in a carryover year if the carryover year is open to the statute of limitations. ()

(BREAK IN CONTINUITY OF SECTIONS)

901. -- ~~999~~19. (RESERVED).

920. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- DEFINITIONS (RULE 920).

Title 63, Chapter 29, Idaho Code. For purposes of administering the Idaho Corporate Headquarters Incentive Act of 2005 and Rules 920 through 926 of these rules, the following

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definitions apply: ()

01. Buildings and Structural Components. Buildings and structural components shall mean buildings and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508. ()

02. Corporate Headquarters Investment Tax Credit. Corporate headquarters investment tax credit shall mean the additional income tax credit allowed by Section 63-2903, Idaho Code. ()

03. Corporate Headquarters New Jobs Tax Credit. Corporate headquarters new jobs tax credit shall mean the additional income tax credit for new jobs allowed by Section 63-2905, Idaho Code. ()

04. Corporate Headquarters Tax Incentive Criteria. Corporate headquarters tax incentive criteria shall mean the tax incentive criteria defined in Section 63-2902(2)(j), Idaho Code. See Rule 922 of these rules for more information. ()

05. Corporate Headquarters Tax Incentives. Corporate headquarters tax incentives shall mean the tax incentives allowed by Title 63, Chapter 29, Idaho Code. ()

06. Corporate Headquarters Real Property Improvement Tax Credit. Corporate headquarters real property improvement tax credit shall mean the real property improvement tax credit allowed by Section 63-2904, Idaho Code. ()

07. Investment in New Plant. Investment in new plant shall mean investment in headquarters or administrative facilities: ()

a. That is constructed or erected by the taxpayer, or ()

b. That is acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition shall not qualify as new plant. ()

c. That qualifies for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. ()

08. Majority of the Company's Services. A majority of the company's services shall exist if more than fifty percent (50%) of the services indicated in Section 63-2902(2)(b), Idaho Code, are performed at the project site. In the case of a unitary group of corporations, the services provided by each corporation included in the unitary group shall be considered in determining whether the fifty percent (50%) threshold has been exceeded. ()

09. Making Capital Investments. The date capital investments are considered made shall be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations. ()

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10. National Headquarters or Administrative Facilities. A national headquarters is that office or location of a multistate business, where a majority of the managerial and administrative personnel are employed. It is the location where the centralized functions such as financial, legal, information technology, purchasing and distribution, and personnel functions are performed. The function and purpose of the national headquarters is to plan, direct and control all aspects of the organization's operations and it has final authority over all regional offices, operating facilities or any other offices of the business enterprise. The national headquarters is subordinate only to the ownership of the organization or its representatives. ()

11. New Employee. A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. However, if an employee is transferred to a qualifying position within the project site from a location within Idaho, but his previous position is filled by another employee, which creates a net new job in Idaho, the employee transferred to the qualifying position in the project site may qualify as a new employee. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. ()

12. Project Period. The project period is a period of time that begins and ends as follows: ()

a. The project period may not begin prior to January 1, 2005. It shall begin the earlier of: ()

i. The date of a physical change to the project site, or ()

ii. The date new employees begin providing personal services at the project site. ()

b. The project period shall end at the earlier of: ()

i. The conclusion of the project, or ()

ii. December 31, 2009. ()

13. Project Site. The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria shall be located at one (1) continuous site. ()

14. Regional Headquarters or Administrative Facilities. A regional headquarters is one (1) of several management offices or facilities of a multistate business that is responsible for planning, directing and controlling a majority of the business operations within a subdivided area of the United States. A regional headquarters performs a function that is separate from the management of operational facilities within the region. A regional headquarters performs functions similar to the national headquarters, but within a more limited area. It has final authority over all matters within its region and is subordinate only to the national headquarters. ()

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921. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- IN GENERAL (RULE 921).

Sections 63-4401 and 63-2906, Idaho Code.

()

01. Coordination With Idaho Small Employer Incentive Act of 2005. A taxpayer who is entitled to, applying for, or receiving any tax incentive allowed under the corporate headquarters incentive act of 2005, shall not be allowed any of the tax incentives provided by the small employer incentive act of 2005.

()

02. Pass-Through Entities. The income tax credits may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credits, for pass-through entities paying tax, and the application of limitations on pass-through credits.

()

03. Reorganizations, Mergers and Liquidations. The corporate headquarters investment tax credit and real property improvement tax credits shall be subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including mere changes in the form of doing business and transactions to which Section 381(a), Internal Revenue Code, apply, shall not cause recapture to occur. To the extent that provisions of the Internal Revenue Code allow an acquiring corporation to succeed to and take into account unused credits of the distributor or transferor corporation, such provisions shall apply to the acquiring corporation with regard to any unused Idaho corporate headquarters investment tax credits and real property improvement tax credits. See Rule 926 of these rules for information related to the recapture required by an acquiring corporation.

()

04. Relocations. The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity.

()

05. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the corporate headquarters investment tax credit, real property improvement tax credit, and new jobs tax credit it earns, but does not use, with other members of the unitary group. Before the corporation may share the credit, it must claim the credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward.

()

922. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- CORPORATE HEADQUARTERS TAX INCENTIVE CRITERIA (RULE 922).

Section 63-2902, Idaho Code.

()

01. In General. The corporate headquarters tax incentive criteria are the minimum requirements a taxpayer must meet in order to be eligible for corporate headquarters tax incentives. To meet the corporate headquarters tax incentive criteria, a taxpayer shall satisfy the following requirements at the project site, during the project period:

()

a. Making capital investment in new headquarters or administrative facilities totaling

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fifty million dollars (\$50,000,000) or more, ()

b. Increasing employment by at least five hundred (500) new employees who meet the requirements of Section 63-2902(2)(j)(ii)(1), Idaho Code, and ()

c. Maintaining that increased employment in Idaho for the remainder of the project period, once the increase in employment by five hundred (500) new employees has been reached. ()

02. Certification. A taxpayer shall certify that he has met, or will meet, the corporate headquarters tax incentive criteria before he can claim any of the corporate headquarters tax incentives. Certification shall be accomplished by filing the applicable form as prescribed by the Tax Commission. The certification form shall include the following information and be filed with the Tax Commission prior to claiming any of the corporate headquarters tax incentives: ()

a. A description of the qualifying project; ()

b. The estimated or actual start date of the project; ()

c. The estimated or actual end date of the project; ()

d. The location of the project site or sites; ()

e. Information as to whether the project site is the location of the company's national or regional headquarters; ()

f. The estimated or actual percent of the company's administrative services handled at the project site; ()

g. The estimated or actual number of new administrative jobs created during the project period; and ()

h. The estimated or actual cost of capital investment in new administrative facilities for each year in the project period. ()

03. Copy of Certification Form Required. A copy of the certification form shall be attached to the Idaho income tax return for each taxable year that a corporate headquarters income tax incentive is claimed or carried over. ()

923. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- CORPORATE HEADQUARTERS INVESTMENT TAX CREDIT (RULE 923).
Sections 63-2903 and 63-2906, Idaho Code. ()

01. Credit Allowed. ()

a. The corporate headquarters investment tax credit allowed by Section 63-2903, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. ()

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b. The credit applies to qualified investment placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the corporate headquarters investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the qualified investments placed in service during that taxable year shall not qualify for the corporate headquarters investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. ()

02. Taxpayers Entitled to the Credit. The corporate headquarters investment tax credit is allowed only to taxpayers who certify that they will meet the corporate headquarters tax incentive criteria. ()

03. Qualified Investments. ()

a. Investments in new plant must meet the definition of qualified investments found in Section 63-3029B, Idaho Code, and requirements of Rules 710 through 719 of these rules, in addition to the requirements of Section 63-2903, Idaho Code, and related rules to qualify as qualified investments. ()

b. Qualified investment must be placed in service in Idaho, but may be located in or outside the project site to qualify. ()

04. Limitations. The corporate headquarters investment tax credit allowable in any taxable year shall be limited as follows: ()

a. The corporate headquarters investment tax credit claimed during a taxable year may not exceed the lesser of: ()

i. Five million dollars (\$5,000,000); or ()

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the corporate headquarters investment tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

05. Carryovers. The carryover period for the corporate headquarters investment tax credit is fourteen (14) years. ()

06. Coordination With Investment Tax Credit Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who is eligible to claim the corporate headquarters investment tax credit is not eligible to claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. However, if a taxpayer has qualified investment in a taxable year in which the

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project period begins or ends, the taxpayer may qualify for both the corporate headquarters investment tax credit on property placed in service during the project period in that taxable year and for the investment tax credit allowed by Section 63-3029B, Idaho Code, for property placed in service before or after the project period in that taxable year. ()

924. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- CORPORATE HEADQUARTERS REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 924).

Sections 63-2904 and 63-2906, Idaho Code. ()

01. Credit Allowed. ()

a. The corporate headquarters real property improvement tax credit allowed by Section 63-2904, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. ()

b. The credit applies to buildings and structural components of buildings placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the corporate headquarters real property improvement tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the buildings and structural components placed in service during that taxable year shall not qualify for the corporate headquarters real property improvement tax credit. ()

02. Taxpayers Entitled to the Credit. The corporate headquarters real property improvement tax credit is allowed only to taxpayers who certify that they will meet the corporate headquarters tax incentive criteria. ()

03. Buildings and Structural Components of Buildings. ()

a. To qualify for the corporate headquarters real property improvement tax credit, buildings and structural components of buildings must meet the following requirements: ()

i. The buildings and structural components of buildings must be new as defined in Subsection 920.07 of these rules. ()

ii. The buildings and structural components of buildings must be placed in service at the project site. ()

iii. The buildings and structural components of buildings must be used for headquarters or administrative facilities. Buildings and structural components of buildings used for manufacturing, retail, wholesaling, distribution, transportation, etc., do not qualify. If a building is used partially for a qualifying and nonqualifying activity, the amount qualifying for the corporate headquarters real property improvement tax credit shall be the amount determined by multiplying the basis of the building by the percentage used for the qualifying activity. ()

b. Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, shall not qualify for the

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corporate headquarters real property improvement tax credit. ()

04. Limitations. The corporate headquarters real property improvement tax credit allowable in any taxable year shall be limited as follows: ()

a. The corporate headquarters real property improvement tax credit claimed during a taxable year may not exceed the lesser of: ()

i. Five hundred thousand dollars (\$500,000); or ()

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the corporate headquarters real property improvement tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

05. Carryovers. The carryover period for the corporate headquarters real property improvement tax credit is fourteen (14) years. ()

925. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- CORPORATE HEADQUARTERS NEW JOBS TAX CREDIT (RULE 925).
Sections 63-2905 and 63-2906, Idaho Code. ()

01. Credit Allowed. ()

a. The corporate headquarters new jobs tax credit allowed by Section 63-2905, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. ()

b. The credit applies to new employees hired during the project period. New employees hired during the project period, but in a taxable year that does not qualify, shall not qualify for the corporate headquarters new jobs tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, new employees hired during that taxable year shall not qualify for the corporate headquarters new jobs tax credit, but may qualify for the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code. ()

c. The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee. ()

02. Taxpayers Entitled to the Credit. The corporate headquarters new jobs tax credit is allowed only to taxpayers who certify that they will meet the corporate headquarters tax incentive criteria. ()

03. Calculating Number of Employees. ()

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a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections 63-2902(e) and 63-2905, Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: ()

i. The employee must have worked primarily within the project site for the taxpayer. ()

ii. The employee must have received earnings at a rate of more than twenty-four dollars and four cents (\$24.04) per hour worked. ()

iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. ()

iv. The employee must have been subject to Idaho income tax withholding. ()

v. The employee must have been covered for Idaho unemployment insurance purposes. ()

vi. The employee must have been employed on a regular full-time basis. An employee who customarily performs duties at least forty (40) hours per week on average for the taxable year shall be considered employed on a regular full-time basis. Leased employees do not qualify as employees of the lessee. ()

vii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. ()

b. Idaho Department of Commerce and Labor Reports. The taxpayer should begin with his Idaho Department of Commerce and Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. ()

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. ()

04. Calculating the Number of New Employees. ()

a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: ()

i. The number of employees for the prior taxable year; or ()

ii. The average of the number of employees for the three (3) prior taxable years. ()

b. The requirements as to who qualifies for the calculation of number of employees

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in Paragraph 925.03.a., of this rule shall apply in computing the number of employees in Subparagraphs 925.04.a.i., and 925.04.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years shall be made consistent with the computations for the current taxable year. ()

c. The number of new employees shall be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. ()

05. Computing the Credit Earned. The taxpayer shall identify each new employee who qualifies for the credit and his annual salary for the taxable year. ()

a. If during the taxable year the new employee earned more than twenty-four dollars and four cents (\$24.04) per hour worked but less than or equal to an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked, the credit for such new employee shall be one thousand five hundred dollars (\$1,500). ()

b. If during the taxable year the new employee earned more than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but less than or equal to an average rate of thirty-six dollars and six cents (\$36.06) per hour worked, the credit for such new employee shall be two thousand dollars (\$2,000). ()

c. If during the taxable year the new employee earned more than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but less than or equal to an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be two thousand five hundred dollars (\$2,500). ()

d. If during the taxable year the new employee earned more than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be three thousand dollars (\$3,000). ()

06. Limitations. The corporate headquarters new jobs tax credit allowable in any taxable year shall be limited as follows: ()

a. The corporate headquarters new jobs tax credit claimed during a taxable year may not exceed one hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the corporate headquarters new jobs tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

07. Carryovers. The carryover period for the corporate headquarters new jobs tax credit is ten (10) years. ()

08. Coordination With Credit for Qualifying New Employees Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who has new employees who are eligible for the corporate

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headquarters new jobs tax credit may not claim the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code, with respect to the same employees. However, a taxpayer may claim the credit for qualifying new employees for any new employees who do not meet the requirements for the corporate headquarters new jobs tax credit, but who meet the requirements of Sections 63-3029E and 63-3029F, Idaho Code. ()

926. IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005 -- RECAPTURE (RULE 926).

Section 63-2907, Idaho Code. ()

01. Failure to Meet Tax Incentive Criteria. If a taxpayer fails to meet the corporate headquarters tax incentive criteria, the full amount of the corporate headquarters investment tax credit, real property improvement tax credit and new jobs tax credit claimed in any taxable year shall be recaptured. ()

02. Year Deficiency Occurs. Recapture shall be a deficiency in tax in the taxable year when the disqualification first occurs. For investment in new plant, disqualification occurs when the property is disposed of or otherwise ceases to qualify. For new employees, disqualification occurs when the employment of new employees falls below five hundred (500). ()

03. Early Disposition of Investment in New Plant.

()

a. If an investment in new plant is disposed of, or otherwise ceases to qualify, prior to the close of the recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. ()

b. The recapture percentage shall be determined as follows. If the property is disposed of or ceases to qualify within: ()

i. One (1) full year or less from the date the property was placed in service, one hundred percent (100%) shall be used; ()

ii. Two (2) full years or less, but more than one (1) full year from the date the property was placed in service, eighty percent (80%) shall be used; ()

iii. Three (3) full years or less, but more than two (2) full years from the date the property was placed in service, sixty percent (60%) shall be used; ()

iv. Four (4) full years or less, but more than three (3) full years from the date the property was placed in service, forty percent (40%) shall be used; ()

v. Five (5) full years or less, but more than four (4) full years from the date the property was placed in service, twenty percent (20%) shall be used. ()

04. Failure to Maintain Increased Employment.

()

a. If the increased level of employment of five hundred (500) new employees is not maintained for the entire recapture period, the recapture amount is computed by multiplying the

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credit earned by the applicable recapture percentage. ()

b. The recapture percentage shall be determined as follows. If the increased level of employment is maintained: ()

i. One (1) full year or less from the date the project period ends, one hundred percent (100%) shall be used; ()

ii. Two (2) full years or less, but more than one (1) full year from the date the project period ends, eighty percent (80%) shall be used; ()

iii. Three (3) full years or less, but more than two (2) full years from the date the project period ends, sixty percent (60%) shall be used; ()

iv. Four (4) full years or less, but more than three (3) full years from the date the project period ends, forty percent (40%) shall be used; ()

v. Five (5) full years or less, but more than four (4) full years from the date the project period ends, twenty percent (20%) shall be used. ()

c. Recapture shall not be required if a new employee is replaced by another employee who performs the same duties as the previous employee at a wage rate that would have resulted in the same amount of credit being earned. ()

05. Reorganizations, Mergers and Liquidations. ()

a. If investment in new plant is disposed of, or otherwise ceases to qualify with respect to an acquiring corporation, before the close of the recapture period, the acquiring corporation shall be responsible for any recapture that would have been applicable to the transferor. ()

b. For purposes of computing the recapture, the recapture period shall begin with the date on which the property was placed in service by the transferor corporation and shall end with the date of the disposition by, or cessation with respect to, the acquiring corporation. ()

927. -- 929. (RESERVED).

930. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- DEFINITIONS (RULE 930).

Title 63, Chapter 44, Idaho Code. For purposes of administering the Idaho Small Employer Incentive Act of 2005 and Rules 930 through 936 of these rules, the following definitions apply: ()

01. Buildings and Structural Components. Buildings and structural components shall mean buildings and structural components of buildings as defined in Federal Treasury Regulation Section 1.48-1 for Internal Revenue Code Section 48 repealed by Public Law 101-508. ()

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02. Headquarters or Administrative Facilities. A headquarters is that office or location of a business, where a majority of the managerial and administrative personnel are employed. It is the location where the centralized functions such as financial, legal, information technology, purchasing and distribution, and personnel functions are performed. The function and purpose of the headquarters is to plan, direct and control all aspects of the organization's operations and it has final authority over all other offices or operating facilities of the business enterprise. ()

03. Investment in New Plant. Investment in new plant shall mean investment in headquarters or administrative facilities: ()

a. That is constructed or erected by the taxpayer, or ()

b. That is acquired by the taxpayer and whose original use begins with the taxpayer after such acquisition. Original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. Property used by the taxpayer prior to its acquisition shall not qualify as new plant. ()

c. That qualifies for the investment tax credit under Section 63-3029B, Idaho Code, or is a building or structural components of buildings. ()

04. Majority of the Company's Services. A majority of the company's services shall exist if more than fifty percent (50%) of the services indicated in Section 63-4402(2)(b), Idaho Code, are performed at the project site. In the case of a unitary group of corporations, the services provided by each corporation included in the unitary group shall be considered in determining whether the fifty percent (50%) threshold has been exceeded. ()

05. Making Capital Investments. The date capital investments are considered made shall be determined in the same manner as the date assets are considered placed in service pursuant to the federal treasury regulations. ()

06. New Employee. A new employee cannot be created by reorganizing the business in such a manner that the employee is reassigned to working in the project site instead of outside the project site. However, if an employee is transferred to a qualifying position within the project site from a location within Idaho, but his previous position is filled by another employee, which creates a net new job in Idaho, the employee transferred to the qualifying position in the project site may qualify as a new employee. An employee working outside of Idaho and transferred to a qualifying position within the project site may also qualify as a new employee. ()

07. Project Period. The project period is a period of time that begins and ends as follows: ()

a. The project period may not begin prior to January 1, 2005. It shall begin the earlier of: ()

i. The date of a physical change to the project site, or ()

ii. The date new employees begin providing personal services at the project site.

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()

b. The project period shall end at the earlier of: ()

i. The conclusion of the project, or ()

ii. December 31, 2009. ()

08. Project Site. The project site may include one (1) location or more than one (1) location in Idaho. However, if more than one (1) location in Idaho is used, eighty percent (80%) or more of the investment required in the tax incentive criteria shall be located at one (1) continuous site. ()

09. Small Employer Investment Tax Credit. Small employer investment tax credit shall mean the additional income tax credit allowed by Section 63-4403, Idaho Code. ()

10. Small Employer New Jobs Tax Credit. Small employer new jobs tax credit shall mean the additional income tax credit for new jobs allowed by Section 63-4405, Idaho Code. ()

11. Small Employer Real Property Improvement Tax Credit. Small employer real property improvement tax credit shall mean the real property improvement tax credit allowed by Section 63-4404, Idaho Code. ()

12. Small Employer Tax Incentive Criteria. Small employer tax incentive criteria shall mean the tax incentive criteria defined in Section 63-4402(2)(j), Idaho Code. See Rule 932 of these rules for more information. ()

13. Small Employer Tax Incentives. Small employer tax incentives shall mean the tax incentives allowed by Title 63, Chapter 44, Idaho Code. ()

931. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- IN GENERAL (RULE 931).
Sections 63-4401 and 63-4406, Idaho Code. ()

01. Coordination With Idaho Corporate Headquarters Incentive Act of 2005. The tax incentives provided by the small employer incentive act of 2005 shall not be allowed to a taxpayer who is entitled to, applying for, or receiving any tax incentive allowed under Chapter 29, Title 63, Idaho Code. ()

02. Pass-Through Entities. The income tax credits may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credits, for pass-through entities paying tax, and the application of limitations on pass-through credits. ()

03. Reorganizations, Mergers and Liquidations. The small employer investment tax credit and real property improvement tax credits shall be subject to recapture in accordance with Section 47, Internal Revenue Code, as in effect prior to the enactment of Public Law 101-

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508. Exceptions included in Section 47(b), Internal Revenue Code, to the general recapture rules, including mere changes in the form of doing business and transactions to which Section 381(a), Internal Revenue Code, apply, shall not cause recapture to occur. To the extent that provisions of the Internal Revenue Code allow an acquiring corporation to succeed to and take into account unused credits of the distributor or transferor corporation, such provisions shall apply to the acquiring corporation with regard to any unused Idaho small employer investment tax credits and real property improvement tax credits. See Rule 936 of these rules for information related to the recapture required by an acquiring corporation. ()

04. Relocations. The relocation from one (1) project site to a new project site within the state may not create new eligibility for the current or any succeeding business entity. ()

05. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the small employer investment tax credit, real property improvement tax credit, and new jobs tax credit it earns, but does not use, with other members of the unitary group. Before the corporation may share the credit, it must claim the credit to the extent allowable against its tax liability. The credit available to be shared is the amount of each credit carryover and credit earned for the taxable year that exceeds the limitations provided for each credit. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. ()

932. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- SMALL EMPLOYER TAX INCENTIVE CRITERIA (RULE 932).
Section 63-4402, Idaho Code. ()

01. In General. The small employer tax incentive criteria are the minimum requirements a taxpayer must meet in order to be eligible for small employer tax incentives. To meet the small employer tax incentive criteria, a taxpayer must satisfy the following requirements at the project site, during the project period: ()

a. Making capital investment in new headquarters or administrative facilities totaling five hundred thousand dollars (\$500,000) or more, and ()

b. Increasing employment by at least ten (10) new employees who meet the requirements of Section 63-4402(2)(j)(ii)(1), Idaho Code. ()

c. Maintaining that increased employment in Idaho for the remainder of the project period, once the increase in employment by ten (10) new employees has been reached. ()

d. Increasing employment by at least one (1) new employee for each fifty thousand dollars (\$50,000) of investment in new headquarters or administrative facilities. For example, if a taxpayer invests four million dollars (\$4,000,000) in new administrative facilities, he must have increased employment by eighty (80) new employees to meet the small employer tax incentive criteria. ()

02. Certification. A taxpayer shall certify that he has met, or will meet, the small employer tax incentive criteria before he can claim any of the small employer tax incentives. Certification shall be accomplished by filing the applicable form as prescribed by the Tax

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Commission. The certification form shall include the following information and be filed with the Tax Commission prior to claiming any of the small employer tax incentives: ()

- a.** A description of the qualifying project; ()
- b.** The estimated or actual start date of the project; ()
- c.** The estimated or actual end date of the project; ()
- d.** The location of the project site or sites; ()
- e.** Information as to whether the project site is the location of the company's national or regional headquarters; ()
- f.** The estimated or actual percent of the company's administrative services handled at the project site; ()
- g.** The estimated or actual number of new administrative jobs created during the project period; and ()
- h.** The estimated or actual cost of capital investment in new administrative facilities for each year in the project period. ()

03. Copy of Certification Form Required. A copy of the certification form shall be attached to the Idaho income tax return for each taxable year that a small employer income tax incentive is claimed or carried over. ()

933. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- SMALL EMPLOYER INVESTMENT TAX CREDIT (RULE 933).

Sections 63-4403 and 63-4406, Idaho Code. ()

01. Credit Allowed. ()

a. The small employer investment tax credit allowed by Section 63-4403, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. ()

b. The credit applies to qualified investment placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the qualified investments placed in service during that taxable year shall not qualify for the small employer investment tax credit, but may qualify for the investment tax credit allowed by Section 63-3029B, Idaho Code. ()

02. Taxpayers Entitled to the Credit. The small employer investment tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive

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criteria. ()

03. Qualified Investments. ()

a. Investments in new plant must meet the definition of qualified investments found in Section 63-3029B, Idaho Code, and requirements of Rules 710 through 719 of these rules, in addition to the requirements of Section 63-2903, Idaho Code, and related rules to qualify as qualified investments. ()

b. Qualified investment must be placed in service in Idaho, but may be located in or outside the project site to qualify. ()

04. Limitations. The small employer investment tax credit allowable in any taxable year shall be limited as follows: ()

a. The small employer investment tax credit claimed during a taxable year may not exceed the lesser of: ()

i. One million two hundred fifty thousand dollars (\$1,250,000); or ()

ii. Sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer investment tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

05. Carryovers. The carryover period for the small employer investment tax credit is fourteen (14) years. ()

06. Coordination With Investment Tax Credit Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who is eligible to claim the small employer investment tax credit is not eligible to claim the investment tax credit allowed by Section 63-3029B, Idaho Code, on the same property. However, if a taxpayer has qualified investment in a taxable year in which the project period begins or ends, the taxpayer may qualify for both the small employer investment tax credit on property placed in service during the project period in that taxable year and for the investment tax credit allowed by Section 63-3029B, Idaho Code, for property placed in service before or after the project period in that taxable year. ()

934. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- SMALL EMPLOYER REAL PROPERTY IMPROVEMENT TAX CREDIT (RULE 934).
Sections 63-4404 and 63-4406, Idaho Code. ()

01. Credit Allowed. ()

a. The small employer real property improvement tax credit allowed by Section 63-

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4404, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. ()

b. The credit applies to buildings and structural components of buildings placed in service during the project period. Qualified investments placed in service during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer real property improvement tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, the buildings and structural components placed in service during that taxable year shall not qualify for the small employer real property improvement tax credit. ()

02. Taxpayers Entitled to the Credit. The small employer real property improvement tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. ()

03. Buildings and Structural Components of Buildings. ()

a. To qualify for the small employer real property improvement tax credit, buildings and structural components of buildings must meet the following requirements: ()

i. The buildings and structural components of buildings must be new as defined in Subsection 930.03 of these rules. ()

ii. The buildings and structural components of buildings must be placed in service at the project site. ()

iii. The buildings and structural components of buildings must be used for headquarters or administrative facilities. Buildings and structural components of buildings used for manufacturing, retail, wholesaling, distribution, transportation, etc., do not qualify. If a building is used partially for a qualifying and nonqualifying activity, the amount qualifying for the small employer real property improvement tax credit shall be the amount determined by multiplying the basis of the building by the percentage used for the qualifying activity. ()

b. Buildings and structural components of buildings that meet the definition of qualified investments pursuant to Section 63-3029B, Idaho Code, shall not qualify for the small employer real property improvement tax credit. ()

04. Limitations. The small employer real property improvement tax credit allowable in any taxable year shall be limited as follows: ()

a. The small employer real property improvement tax credit claimed during a taxable year may not exceed the lesser of: ()

i. One hundred twenty-five thousand dollars (\$125,000); or ()

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the small employer real property improvement tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See

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Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

05. Carryovers. The carryover period for the small employer real property improvement tax credit is fourteen (14) years. ()

935. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- SMALL EMPLOYER NEW JOBS TAX CREDIT (RULE 935).
Sections 63-4405 and 63-4406, Idaho Code. ()

01. Credit Allowed. ()

a. The small employer new jobs tax credit allowed by Section 63-4405, Idaho Code, may be earned during taxable years beginning on or after January 1, 2005 and before December 31, 2009. ()

b. The credit applies to new employees hired during the project period. New employees hired during the project period, but in a taxable year that does not qualify, shall not qualify for the small employer new jobs tax credit. For example, if a project begins after December 31, 2004, but in a fiscal year beginning in 2004, new employees hired during that taxable year shall not qualify for the small employer new jobs tax credit, but may qualify for the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code. ()

c. The applicable credit rate per new employee depends on the wage rate received by a qualifying new employee. ()

02. Taxpayers Entitled to the Credit. The small employer new jobs tax credit is allowed only to taxpayers who certify that they will meet the small employer tax incentive criteria. ()

03. Calculating Number of Employees. ()

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Sections 63-4402(2)(e) and 63-4405, Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: ()

i. The employee must have worked primarily within the project site for the taxpayer. ()

ii. The employee must have received earnings at a rate of more than twenty-four dollars and four cents (\$24.04) per hour worked. ()

iii. The employee must have been eligible to receive employer provided coverage under a health plan described in Section 41-4703, Idaho Code. ()

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- iv. The employee must have been subject to Idaho income tax withholding. ()
- v. The employee must have been covered for Idaho unemployment insurance purposes. ()
- vi. The employee must have been employed on a regular full-time basis. An employee who customarily performs duties at least forty (40) hours per week on average for the taxable year shall be considered employed on a regular full-time basis. Leased employees do not qualify as employees of the lessee. ()
- vii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. ()
- b.** Idaho Department of Commerce and Labor Reports. The taxpayer should begin with his Idaho Department of Commerce and Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. ()
- c.** Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. ()
- 04. Calculating the Number of New Employees.** ()
- a.** The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: ()
- i. The number of employees for the prior taxable year; or ()
- ii. The average of the number of employees for the three (3) prior taxable years. ()
- b.** The requirements as to who qualifies for the calculation of number of employees in Paragraph 935.03.a., of this rule shall apply in computing the number of employees in Subparagraphs 935.04.a.i., and 935.04.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years shall be made consistent with the computations for the current taxable year. ()
- c.** The number of new employees shall be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. ()
- 05. Computing the Credit Earned.** The taxpayer shall identify each new employee who qualifies for the credit and his annual salary for the taxable year. ()
- a.** If during the taxable year the new employee earned more than twenty-four dollars and four cents (\$24.04) per hour worked but less than or equal to an average rate of twenty-eight

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dollars and eighty-five cents (\$28.85) per hour worked, the credit for such new employee shall be one thousand five hundred dollars (\$1,500). ()

b. If during the taxable year the new employee earned more than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but less than or equal to an average rate of thirty-six dollars and six cents (\$36.06) per hour worked, the credit for such new employee shall be two thousand dollars (\$2,000). ()

c. If during the taxable year the new employee earned more than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but less than or equal to an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be two thousand five hundred dollars (\$2,500). ()

d. If during the taxable year the new employee earned more than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked, the credit for such new employee shall be three thousand dollars (\$3,000). ()

06. Limitations. The small employer new jobs tax credit allowable in any taxable year shall be limited as follows: ()

a. The small employer new jobs tax credit claimed during a taxable year may not exceed sixty-two and five-tenths percent (62.5%) of the tax, after allowing all other income tax credits that may be claimed before the small employer new jobs tax credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. ()

b. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. ()

07. Carryovers. The carryover period for the small employer new jobs tax credit is ten (10) years. ()

08. Coordination With Credit for Qualifying New Employees Allowed by Title 63, Chapter 30, Idaho Code. A taxpayer who has new employees who are eligible for the small employer new jobs tax credit may not claim the credit for qualifying new employees allowed by Section 63-3029F, Idaho Code, with respect to the same employees. However, a taxpayer may claim the credit for qualifying new employees for any new employees who do not meet the requirements for the small employer new jobs tax credit, but who meet the requirements of Sections 63-3029E and 63-3029F, Idaho Code. ()

936. IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005 -- RECAPTURE (RULE 936). Section 63-4407, Idaho Code. ()

01. Failure to Meet Tax Incentive Criteria. If a taxpayer fails to meet the small employer tax incentive criteria, the full amount of the small employer investment tax credit, real property improvement tax credit and new jobs tax credit claimed in any taxable year shall be

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recaptured. ()

02. Year Deficiency Occurs. Recapture shall be a deficiency in tax in the taxable year when the disqualification first occurs. For investment in new plant, disqualification occurs when the property is disposed of or otherwise ceases to qualify. For new employees, disqualification occurs when the employment of new employees falls below the level of new employees required by Section 63-4402(2)(j), Idaho Code. ()

03. Early Disposition of Investment in New Plant. ()

a. If an investment in new plant is disposed of, or otherwise ceases to qualify, prior to the close of the recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. ()

b. The recapture percentage shall be determined as follows. If the property is disposed of or ceases to qualify within: ()

i. One (1) full year or less from the date the property was placed in service, one hundred percent (100%) shall be used; ()

ii. Two (2) full years or less, but more than one (1) full year from the date the property was placed in service, eighty percent (80%) shall be used; ()

iii. Three (3) full years or less, but more than two (2) full years from the date the property was placed in service, sixty percent (60%) shall be used; ()

iv. Four (4) full years or less, but more than three (3) full years from the date the property was placed in service, forty percent (40%) shall be used; ()

v. Five (5) full years or less, but more than four (4) full years from the date the property was placed in service, twenty percent (20%) shall be used. ()

04. Failure to Maintain Increased Employment. ()

a. If the required increased level of employment is not maintained for the entire recapture period, the recapture amount is computed by multiplying the credit earned by the applicable recapture percentage. ()

b. The recapture percentage shall be determined as follows. If the increased level of employment is maintained: ()

i. One (1) full year or less from the date the project period ends, one hundred percent (100%) shall be used; ()

ii. Two (2) full years or less, but more than one (1) full year from the date the project period ends, eighty percent (80%) shall be used; ()

iii. Three (3) full years or less, but more than two (2) full years from the date the

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project period ends, sixty percent (60%) shall be used; ()

iv. Four (4) full years or less, but more than three (3) full years from the date the project period ends, forty percent (40%) shall be used; ()

v. Five (5) full years or less, but more than four (4) full years from the date the project period ends, twenty percent (20%) shall be used. ()

c. Recapture shall not be required if a new employee is replaced by another employee who performs the same duties as the previous employee at a wage rate that would have resulted in the same amount of credit being earned. ()

05. Reorganizations, Mergers and Liquidations. ()

a. If investment in new plant is disposed of, or otherwise ceases to qualify with respect to an acquiring corporation, before the close of the recapture period, the acquiring corporation shall be responsible for any recapture that would have been applicable to the transferor. ()

b. For purposes of computing the recapture, the recapture period shall begin with the date on which the property was placed in service by the transferor corporation and shall end with the date of the disposition by, or cessation with respect to, the acquiring corporation. ()

937. -- 999. (RESERVED).

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IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105 and 63-3624, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 614 through 633.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact James Husted at (208) 334-7530.

DATED this 2nd day of November, 2005.

James Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

The Following Notice Was Published With The Proposed Rule

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AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 041: Amend Rule 041 to conform to the rate change.

Rule 058: Amend Rule 058 to conform to the 5% tax rate, effective July 1, 2005.

Rule 063: Amend Rule 063 to conform to the statute.

Rule 068: Amend Rule 068 to correct the effective dates for the 5% and 6% rates and strike Subsection 068.07.

Rule 073: Amend Rule 073 to change references to the 6% rate to 5%.

Rule 107: Amend Rule 107 to correct the rule so it refers to a 5% tax rate.

Rule 109: Amend Rule 109 to add a statement that, as of July 1, 2005, the fee is \$35.

Rule 126: Amend Rule 126 to strike Subsections 126.03 and 126.04.

Rule 128: Amend Rule 128 to conform to Section 63-3622RR, Idaho Code.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments

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must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

041. FOOD, MEALS, OR DRINKS (RULE 041).

01. In General. This rule covers the imposition of tax on sales of food, meals, or drinks by commercial establishments, college campuses, conventions, nonprofit organizations, private clubs, and similar organizations. (7-1-93)

02. Commercial Establishments. Sales tax is imposed on the amount paid for food, meals, or drinks furnished by any restaurant, cafeteria, eating house, hotel, drugstore, diner, club, or any other place or organization regardless of whether meals are regularly served to the public. (7-1-93)

03. Clubs and Organizations. Private clubs, country clubs, athletic clubs, fraternal, and other similar organizations are retailers of tangible personal property sold by them, even if they make sales only to members. Such organizations must obtain an Idaho seller's permit and report and pay retail sales tax on all sales. Taxability of membership dues depends upon the nature of the club. See Rule 030 of these rules. Special rules apply to religious organizations. See Rule 086 of these rules. (3-15-02)

a. When an organization holds a function in its own quarters, maintains its own kitchen facilities, and sells tickets which include items such as meals, dancing, drinks, entertainment, speakers, and registration fees (convention), the charges may be separated and tax collected on meals, drinks, and admission fees when the ticket is sold. For example:

Dinner, dancing, etc.	\$ 8.00
Tax	<u>.4840</u>
Registration, speakers, etc.	\$ 6.60
Total Ticket	\$15.08 <u>15.00</u>

Meals and the use of recreational facilities are taxable. Registration fees, speaker fees, and similar charges are not taxable. (~~3-20-04~~)()

b. The organization holding the function or convention must obtain a seller's permit and remit tax to the state. When the charges are not separated, the total price of the ticket is taxable. (7-1-93)

c. When an organization holds a function in facilities operated by a restaurant or motel and sells tickets for meals, drinks, and other services, no sales tax applies to these sales if

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the organization pays the restaurant or hotel sales tax on the meals and drinks furnished and all other services performed. The hotel, restaurant, or caterer will remit the tax to the state. (7-1-93)

04. Colleges, Universities, and Schools. A cafeteria operated by a state university, junior college district, public school district, or any other public body is treated the same as a cafeteria operated by a private enterprise. Purchases of food for resale are not taxable; meals sold are taxable. (7-1-93)

a. If a meal is paid for by cash or a meal ticket is sold to the student, tax is computed on the total sales price of the meal. If meals are sold as part of a room and board fee, the amount paid for board must be separated from the amount paid for the room. Tax is calculated and collected on that part of the total fee allocated to the purchase of meals. (7-1-93)

b. Sales of meals by public or private schools under the Federal School Lunch Program are exempted by Section 63-3622J, Idaho Code. (7-1-93)

05. Fraternities, Sororities, and Cooperative Living Group. Fraternities and sororities generally purchase and prepare food for their own consumption. The food is prepared and served in a cooperative manner by members of the fraternity or by employees hired by the group for this purpose. Purchases made by the fraternity or sorority are for consumptive use and subject to sales tax. There is no sale of meals to fraternity or sorority members and no sales tax imposed on any allocated charge for them whether stated separately or included as part of a lump sum charge for board and room. (7-1-93)

a. If a concessionaire is retained by the fraternity or sorority to furnish meals, the concessionaire is a retailer engaged in the business of selling meals; food purchases are for resale and meals supplied by the concessionaire to members of the fraternity or sorority are subject to sales tax. (7-1-93)

b. If the fraternity or sorority regularly furnishes meals for a consideration to nonmembers, these meals become subject to tax and the fraternity or sorority must obtain an Idaho seller's permit. (7-1-93)

c. Cooperative living groups are normally managed in much the same manner as fraternities and sororities. Food is purchased and meals are prepared and served by members of the group or their employees. The same conditions outlined above for fraternities and sororities apply to cooperative living groups. (~~7-1-93~~)()

06. Boarding Houses. Sales of meals furnished by boarding houses are subject to tax, when they are charged separately. This applies whether or not the meals are served exclusively to regular boarders. Where no separate charge or specific amount is paid for meals furnished, but is included in the regular board and room charges, the boarding house or other place is not considered to be selling meals, but is the consumer of the items used in preparing such meals. (7-1-93)

07. Honor System Snack Sales. Honor system snack sales are those items of individually sized prepackaged snack foods, such as candy, gum, chips, cookies or crackers, which customers may purchase by depositing the purchase price into a collection receptacle.

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Displays containing these snacks are generally placed in work or office areas and are unattended. Customers are on their honor to pay the posted price for the article removed from the display. Purchases from these snack displays are subject to sales tax. (7-1-93)

a. Sales tax applies to the gross receipts. The posted price must include a statement that sales tax is included. (7-1-93)

b. The formula for computing the taxable amount ~~effective May 1, 2003~~, is: (Gross Receipts) / (one hundred ~~six~~ five percent (1065%)) = Taxable Sales. (Taxable Sales) x (~~six~~ five percent (65%)) = Tax Due. (3-20-04)()

08. **Church Organizations.** Special rules apply to religious organizations. See Rule 086 of these rules. (3-15-02)()

09. **Senior Citizens.** Meals sold under programs that provide nutritional meals for the aging under Title III-C of the Older Americans Act, Public Law 93-29, are exempted from the sales tax by Section 63-3622J, Idaho Code. Organizations selling such meals must obtain an Idaho seller's permit and collect sales tax when selling meals to purchasers who are not senior citizens. (7-1-93)

10. **Nontaxable Purchases by Establishments Selling Meals or Beverages.** Persons who serve food, meals, or drinks for a consideration may purchase tangible personal property without paying tax if the property is for resale to their customers, is included in the fee charged to the customer, and is directly consumed by the customer in such a way that it cannot be reused. A resale certificate must be provided to the vendor when the establishment purchases such items for resale. See Rule 128 of these rules. Examples of items which are purchased for resale and directly consumed by customers include: (3-15-02)

a. Disposable containers, such as milkshake containers, paper or styrofoam cups and plates, to-go containers and sacks, pizza cartons, and chicken buckets. (7-1-93)

b. Disposable supplies included in the price of the meal or drink, such as drinking straws, stir sticks, paper napkins, paper placemats, and toothpicks. (7-1-93)

c. Candies, popcorn, drinks, or food, when included in the consideration paid for other food, meals, or drinks. (7-1-93)

11. **Taxable Purchases by Establishments Selling Meals or Beverages.** Tangible personal property which is not included in the fee charged to the customer and not directly consumed by the customer is subject to the tax when purchased by the restaurant, bar, food server, or similar establishment. Tangible personal property which is not directly consumed by the customer includes property that is nondisposable in nature or property that is depreciated in the books and records of the restaurant, bar, or similar establishment. Examples of taxable purchases include: (7-1-93)

a. Waxed paper, stretch wrap, foils, paper towels, garbage can liners, or other paper products consumed by the retailer, as well as linens, silverware, glassware, tablecloths, towels, and nondisposable napkins, furniture, fixtures, cookware, and menus. (7-1-93)

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b. Any tangible personal property available to the general public, such as restroom supplies and matches. (7-1-93)

c. Complimentary candies, popcorn, drinks, or food, when patrons are not required to purchase other food, meals, or drinks in order to receive the complimentary goods. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

058. SALES THROUGH VENDING MACHINES (RULE 058).

01. In General. The sale of tangible personal property through a vending machine is a taxable transaction. The term vending machine shall mean any mechanical device which, without the assistance of a human cashier, dispenses tangible personal property to a purchaser who deposits cash in the device. Video games and other coin operated amusement devices are not vending machines. Fees paid for the use of coin operated amusement devices are not subject to sales tax pursuant to Section 63-3623B, Idaho Code. See Rule 109 of these rules. (5-3-03)

02. Amount Subject to Tax. Pursuant to Section 63-3613, Idaho Code, sales of items through a vending machine for amounts from twelve cents (\$0.12) through one dollar (\$1) are taxable at one hundred seventeen percent (117%) of the vendor's acquisition cost of the items. Items sold for more than one dollar (\$1) are taxable on the retail sales price. Sales of items for a price of eleven cents (\$0.11) or less are exempt from tax pursuant to Section 63-3622L, Idaho Code. (5-3-03)

03. Requirement to Obtain a Seller's Permit. Vendors who sell tangible personal property through a vending machine must obtain a seller's permit. Only one seller's permit is required; however, each vending machine operated by the vendor must conspicuously display the vendor's name, address, and seller's permit number. When a number of vending machines are placed in a single location, the owner's name, address, and seller's permit number need be displayed only once. (5-3-03)

04. Calculation of Tax. The following examples show how vending machine operators shall calculate the amount of sales tax due: (5-3-03)

a. Example 1: Corporation A's business activity consists only of sales through vending machines in various locations in the state of Idaho. All of the items sold in the vending machines are sold for a unit price of twelve cents (\$0.12) or more but none are sold for a price greater than one dollar (\$1). During the month of July, Corporation A's gross receipts from the vending machine sales were ten thousand dollars (\$10,000). Corporation A purchased the items sold during that one (1) month period for eight thousand dollars (\$8,000). The company made no nontaxable or exempt sales. Corporation A should file a sales and use tax return for the month of July, computing and reporting its taxable sales as follows. Numbers correspond to line numbers on the return.

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Line 1.	Total sales	\$ 9,360
Line 2.	Less nontaxable sales	\$ 0
Line 3.	Net taxable sales	\$ 9,360
Line 1 computed as follows:		
8,000 x 117% = \$ 9,360		

(3-20-04)

b. Example 2: During the month of July, Corporation B had total Idaho sales in the amount of ten thousand dollars (\$10,000). In addition to sales through vending machines, the corporation made over-the-counter sales, all of which were taxable, in the amount of two thousand dollars (\$2,000). The remaining eight thousand dollars (\$8,000) constituted sales through vending machines, of which one thousand dollars (\$1,000) was for items with a unit retail price of over one dollar (\$1). The other seven thousand dollars (\$7,000) were sales of items through vending machines with a unit retail price of fifty cents (\$0.50) each. The items sold during the month for fifty cents (\$0.50) each were purchased by Corporation B for five thousand dollars (\$5,000). Corporation B should file a sales and use tax return for the month, computing and reporting its taxable sales as follows:

Line 1.	Total sales	\$ 8,793.40
Line 2.	Less nontaxable sales	\$ 0
Line 3.	Net taxable sales	\$ 8,793.40
Line 1 computed as follows:		
2,000 + (1,000 ÷ 1.065) + (5,000 x 117%) = \$ 8,793.40		

Note, that if a vendor sells some items for more than one dollar (\$1) the sales tax is included in the total receipts. This amount must be divided by one (1) plus the current tax rate expressed as a decimal, to determine the receipts before sales tax. If the tax rate is ~~six~~ five percent (~~65%~~) the divisor is one and ~~six~~ five one-hundredths (1.065). (3-20-04)()

05. Cross-References. (7-1-93)

a. Amusement devices, see Rule 109 of these rules. (5-3-03)

b. Money operated dispensing equipment, see Rule 095 of these rules. (5-3-03)

c. Sales of newspapers through vending machines, see Rule 033 of these rules. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

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063. BAD DEBTS AND REPOSSESSIONS (RULE 063).

01. In General. Sales tax must be collected on an accrual basis. The tax is owed to the state at the time of sale, regardless of when the payment is made by the customer. (7-1-93)

02. Rules for Unsecured Credit Sales. The following rules apply to unsecured credit sales: (7-1-93)

a. When a seller cannot collect accounts receivable arising from an unsecured credit sale of tangible personal property subject to sales tax, he may make an adjustment on his sales tax return or apply for a refund of taxes according to this rule. (7-1-93)

b. The adjustment or refund may be claimed on the sales tax return for the month in which the bad debt adjustment is made on the books and records of the taxpayer. The tax for which the credit or refund is sought must be included in the amount which is financed and which is charged off as a bad debt for income tax purposes. (6-23-94)

c. A written claim for the refund may also be filed with the State Tax Commission within three (3) years from the time the tax was paid to the State Tax Commission. The State Tax Commission will review all such refund claims. See Rule 117 of these rules, Refund Claims. (3-20-04)

03. Rules for Secured Credit Sales. The following rules apply to secured credit sales: (7-1-93)

a. If the collateral is not repossessed, the seller may treat a bad debt the same as an unsecured credit sale. (7-1-93)

b. If the collateral is repossessed and not seasonably resold at a public or private sale, its retention is considered to satisfy the debt and no bad debt adjustment is allowed. (7-1-93)

c. If the collateral is repossessed and seasonably resold at public or private sale, then the seller is entitled to a bad debt adjustment. However, before calculating the amount of tax that may be credited or refunded, the taxpayer must reduce the amount claimed as worthless by the amount realized from the sale of the collateral. (3-30-01)

d. If merchandise is repossessed and is subsequently resold at retail, sales tax is computed on the sales price and collected and remitted the same as on other retail sales. (7-1-93)

04. Application to Taxpayers. The following rules apply to taxpayers who remit sales tax on an accrual basis but report income tax on a cash basis or are not required to file income tax returns. (7-1-93)

a. Retailers are required to remit sales tax on an accrual basis, even though their accounting records and income tax returns may be prepared on the cash basis of accounting. (7-1-93)

b. For taxpayers who keep their records and file income tax returns on a cash basis, a

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worthless account cannot be written off as a bad debt because it has not been recognized as income in the taxpayer's books. These retailers may still claim a bad debt for sales tax purposes. The claim should be made at the same time and in the same way discussed in Subsections 063.02 and 063.03 of this rule, even though the bad debt does not appear on the retailer's income tax return. (7-1-93)

c. For taxpayers who are not required to file income tax returns, the claim should be made the same way discussed in Subsections 063.02 and 063.03 of this rule. (6-23-94)

d. As these claims cannot be verified against the income tax returns of these taxpayers, sufficient evidence must be attached to the sales tax return to prove that the account has become worthless, that the tax was remitted by the retailer, and that the retailer did not receive payment of the tax from the buyer. (7-1-93)

05. Amount of Credit Allowed. The amount of credit that can be claimed is the amount of sales tax that is uncollectible. If both nontaxable and taxable items are financed, credit may be taken only for that portion of the bad debt which represents unpaid sales tax. (7-1-93)

a. Example: A retailer sells a thirty thousand dollar (\$30,000) forklift for thirty-one thousand ~~eight~~ five hundred dollars (\$31,~~85~~00) including sales tax. The purchaser pays a five thousand dollar (\$5,000) down payment and finances the balance. The purchaser later defaults and the retailer repossesses the forklift and sells it at a public auction for six thousand dollars (\$6,000). At the time of repossession the purchaser owes seventeen thousand ~~five~~ two hundred forty-five dollars (\$17,~~52~~45) including the financed sales tax. After the sale the amount that the retailer writes off is eleven thousand ~~five~~ two hundred forty-five dollars (\$11,~~52~~45). The sales tax bad debt write off is ~~six~~ five hundred ~~fifty-three~~ thirty-five dollars (\$~~653~~ 535).

Total taxable sale	\$30,000
65% sales tax	\$1, 85 <u>00</u>
Total sale	\$31, 85 <u>00</u>
Down payment	(\$5,000)
Total financed	\$26, 85 <u>00</u>
Payment to principal after sale	(\$9,255)
Amount realized at public sale	(\$6,000)
Total bad debt	\$11, 62 <u>45</u>
Sales tax portion of bad debt	
\$11,545 - (11,545 / 1.06)	\$ 653
$\$11,245 - (11,245 / 1.05) =$	$\$ 535$

(~~3-20-04~~)()

b. Example: A car dealer makes a taxable sale of an automobile for fourteen thousand nine hundred dollars (\$14,900) along with an extended warranty for five hundred dollars (\$500), a documentation fee of one hundred dollars (\$100), a title fee of eight dollars (\$8) and credit insurance for one hundred dollars (\$100). The customer pays one thousand dollars (\$1,000) cash

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and trades in a car worth ten thousand dollars (\$10,000) which is pledged as security for an earlier outstanding loan of six thousand dollars (\$6,000). The customer, therefore, has to borrow enough to pay off the old loan on the trade-in. The customer defaults on the new ten thousand ~~nine~~ eight hundred ~~eight~~ fifty dollar (\$10,908~~850~~) loan after paying five hundred dollars (\$500) towards the principal. The customer damages the automobile in an accident leaving the collateral worthless. The car dealer may take an adjustment for only that portion of the bad debt representing the taxable percentage of the total sales price of the car. Only five thousand dollars (\$5,000) of the total fifteen thousand ~~nine~~ eight hundred ~~eight~~ fifty dollar (\$15,908~~850~~) cost was taxable.

Sales price of vehicle	\$14,900
Documentation fee	\$100
Extended warranty	\$500
Credit insurance	\$100
Title fee	\$8
Trade-in	(\$10,000)
Sales tax	\$300 <u>250</u>
Subtotal	\$5,908 <u>5,858</u>
Down payment	(\$1,000)
Invoice total	\$4,908 <u>4,858</u>
Amount financed	\$10,908 <u>10,850</u>
Payment to principal after sale	(\$500)
Amount of bad debt	\$10,408 <u>10,350</u>
Amount of down payment used to pay sales tax	
(300 / 5,908)	5.08%
(.0508 x \$1,000)	\$50.80
.0427 x \$1,000	\$42.70
Amount of sales tax financed	
\$300 - \$50.80	\$249.20
\$250 - \$42.70	\$207.30
Percentage of loan representing sales tax	
\$249.20 / \$10,908	2.28%
\$207.30 / \$10,850	1.91%
Sales tax paid by payments to principal	
\$500 x .0228	\$11.40
\$11.40 / 1.91%	\$595.55
Amount of bad debt write-off	
\$249.20 - \$11.40	\$237.80
\$207.30 - \$9.55	\$197.75

(3-20-04)()

06. Bad Debt Collected at a Later Date. If a bad debt account is collected later, the retailer must pay tax on the amount collected. (7-1-93)

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07. To Claim Credit for a Bad Debt. Credit for bad debts for sales tax purposes may be claimed by the retailer that made the original sale and paid the sales tax to the state. Financial institutions or other third parties who are the assignees of the retailer may claim a bad debt for sales tax on property for which they provided financing, if the amount financed includes the sales tax remitted on the sale of the property. The person claiming the credit must be the person who ultimately bears the loss if the purchaser of the property defaults on the obligation to repay.

(3-30-01)

08. Cross-Reference. Rescinded Sale. See Rule 045 of these rules. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

068. COLLECTION OF TAX (RULE 068).

01. In General. Idaho Sales Tax is an excise tax which is imposed upon each sale at retail. The tax is computed at the time of each sale and the tax on the total sales for the reporting period, usually monthly, will be reported and paid on or before the due date as established by *ISTC* Rule 105 of these rules. (~~7-1-93~~)(____)

02. Sales Tax to be Collected by Retailer. Sales tax shall be collected by the retailer from the customer. The tax will be computed on and collected for all credit, installment, conditional or similar sales when made or, in the case of rentals, when the rental is charged. (7-1-93)

03. Computation of Tax. The retailer will compute the tax upon the total sale to a purchaser at a given time and not upon each individual item purchased. (7-1-93)

04. Bracket System for Five Percent Tax Rate. The following schedule is to be used in determining the amount of tax to be collected by a retailer at the time of sale ~~through April 30, 2003~~ beginning July 1, 2005. (~~3-20-04~~)(____)

- a. Multiply five cents (\$0.05) for every whole dollar included in the sale, and (7-1-93)
- b. Add for each additional fractional dollar amount of sale the corresponding tax below:

Dollar Amount of Sale	Tax
0.00 - 0.05	.00
0.06 - 0.25	.01
0.26 - 0.45	.02
0.46 - 0.65	.03

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Dollar Amount of Sale	Tax
0.66 - 0.85	.04
0.86 - 0.99	.05

However, sales to a total amount of eleven cents (\$0.11) or less are exempt from tax. (7-1-93)

05. Bracket System for Six Percent Tax Rate. Beginning May 1, 2003, and ending June 30, 2005, the sales tax rate is six percent (6%). The following schedule is to be used in determining the amount of tax to be collected by a retailer at the time of sale. ~~(3-20-04)~~()

- a. Multiply six cents (\$0.06) for every whole dollar included in the sale, and (3-20-04)
- b. Add for each additional fractional dollar amount of sale the corresponding tax below:

Dollar Amount of Sale	Tax
0.00 - 0.03	.00
0.04 - 0.20	.01
0.21 - 0.37	.02
0.38 - 0.53	.03
0.54 - 0.70	.04
0.71 - 0.87	.05
0.88 - 0.99	.06

However, sales to a total amount of eleven cents (\$0.11) or less are exempt from tax. (3-20-04)

06. Tax to be Separately Displayed. The amount of tax collected by the retailer must be displayed separately from the list price, marked price, the price advertised in the premises or other price on the sales slip or other proof of sale. The retailer may retain any amount collected under the bracket system which is in excess of the amount of tax for which he is liable to the state during the period as compensation for the work of collecting that tax.

(7-1-93)

07. ~~Unit Sales at Single Price.~~ ~~When transactions involve unit sales at a single price, such as admission tickets, the requirement to calculate and itemize the sales tax can be met by showing the total cost separately in a statement of the price on the ticket.~~ ~~(7-1-93)~~

~~a. Example 1: The ticket price for admission to a high school basketball game is two dollars (\$2). The separate statement of tax may be shown as:~~

Admission	\$1.88
Tax (6%)	\$.12

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Total	\$2.00
-------	--------

~~Twelve cents (\$0.12) must be set aside and held as state money arising from tax on the admission.~~
~~(3-20-04)~~

b. ~~Example 2: The ticket price to a movie theater is four dollars (\$4.). The separate statement of tax may be shown as:-~~

Admission	\$3.76
Tax (6%)	\$.24
Total	\$4.00

~~Twenty four cents (\$0.24) must be set aside and held as state money arising from tax on the admission.~~
~~(3-20-04)~~

087. Reimbursement of Tax From the Purchaser to the Seller. If the seller does not collect the sales tax at the time of the sale and it is later determined that sales tax should have been collected, the seller can then collect the sales tax from the purchaser if the delinquent tax has been paid by the seller. The legal incidence of the tax is intended to fall upon the buyer, Section 63-3619, Idaho Code. (7-1-93)

a. Example: The Commission determines that certain nontaxed sales by a seller are subject to sales tax and that the seller did not collect the tax and did not have documentation supporting exemption from the sales tax. The Commission issued a Notice of Deficiency Determination to the seller imposing the tax and interest. The assessment then paid by the seller entitles the seller to reimbursement from the buyer. (7-1-93)

b. The seller is also entitled to collect reimbursement from the buyer of the interest paid on the taxes assessed. (7-1-93)

c. The seller is not entitled to reimbursement from the buyer for penalties imposed as part of the assessment against the seller. (7-1-93)

d. The receivable established by the seller seeking reimbursement from the purchaser is not subject to expiration of the statute of limitations provided in Section 63-3633, Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

073. TANGIBLE PERSONAL PROPERTY BROUGHT OR SHIPPED TO IDAHO (RULE 073).

01. Equipment Brought Into Idaho. Equipment or other tangible personal property brought or shipped to Idaho by residents or nonresidents is presumed to be for storage, use, or other consumption in this state. Generally, tangible personal property is subject to use tax on its

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fair market value when it is first used in Idaho. Special rules apply to transient equipment present in Idaho for ninety (90) days or less in any consecutive twelve (12) month period. See Section 63-3621A, Idaho Code, and Subsection 073.03, ~~below of this rule~~. For property a contractor fabricates to install into Idaho real property, see Rule 012 of these rules. (3-20-04)()

02. Substantive Use. Any substantive use of the property in Idaho is sufficient to subject the property to use tax. Use is defined in Section 63-3615, Idaho Code, and Rule 072 of these rules. The use tax does not apply to the use of items purchased before July 1, 1965, or the use of items excluded from tax by Idaho Code. (3-20-04)

03. Transient Equipment. Transient equipment means equipment that is: owned by the user, which is a business based in another state; a depreciable asset for income tax purposes and treated as such on the owner's income tax returns; brought to Idaho and kept here for ninety (90) days or less in any consecutive twelve (12) months; and either was not taxed in another state or, if tax was paid to another state, the amount paid was less than the amount of Idaho use tax due. (7-1-93)

a. A nonresident business that brings transient equipment to Idaho may elect to pay use tax on either the fair market value of the equipment at the time it enters Idaho, or the fair market rental value of transient equipment for the time it is kept in Idaho. Fair market rental value is the amount it would cost to rent or lease similar equipment from an unrelated equipment rental company. (3-20-04)

b. Businesses that elect to pay use tax on the rental value of transient equipment may do so without the approval of the Tax Commission as long as the use tax due on the first month's rental is paid in a timely manner. If the owner fails to pay the tax timely, he must get written approval from the Tax Commission to use this option. (7-1-93)

c. Equipment which remains in Idaho for more than ninety (90) days in any consecutive twelve (12) months is no longer transient. This equipment becomes subject to Idaho use tax on its fair market value at that time. No credit may be taken for use tax paid on fair market rentals against the use tax due at the time equipment ceases to qualify as transient. (7-1-93)

d. Example: A Wyoming contractor brings transient equipment, with a fair market value of one hundred thousand dollars (\$100,000), to Idaho for use on a ninety (90) day project. The fair market rental value of the equipment for the ninety (90) days totals fifteen thousand dollars (\$15,000). Idaho use tax on the fair market rental value, at the rate of ~~six~~ five percent (65%), totals ~~nine~~ seven hundred fifty dollars (\$9,007.50). The contractor paid three thousand five hundred dollars (\$3,500) of sales tax to the state of Wyoming when he bought the equipment new. The contractor is not required to pay tax to Idaho since the tax paid to Wyoming exceeds the amount of Idaho use tax due. (3-20-04)()

e. Example: The same contractor takes a second job in Idaho within the same twelve (12) months and brings the same equipment, now with a fair market value of ninety-five thousand dollars (\$95,000), to Idaho for the job. As the equipment has now exceeded the ninety (90) day rule for transient equipment, it is subject to Idaho's ~~six~~ five percent (65%) use tax on its fair market value of ninety-five thousand dollars (\$95,000) x ~~six~~ five percent (65%) = ~~five~~ four thousand seven hundred fifty dollars (\$5,700 4,750). Credit of two thousand ~~six~~ seven hundred

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fifty dollars (\$2,600~~750~~) is allowed for sales tax paid to Wyoming, three thousand five hundred dollars (\$3,500) less the ~~nine~~ seven hundred fifty dollar (\$900~~750~~) credit already used on rentals. The contractor owes ~~three~~ two thousand ~~one hundred~~ dollars (\$3,100 2,000) of use tax to Idaho.
(3-20-04)()

04. Licensed Motor Vehicles. A motor vehicle licensed in a nonresident's home state and brought to Idaho to use for ninety (90) days or less in any consecutive twelve (12) months is not subject to Idaho use tax. Once the vehicle is used here more than ninety (90) days during any consecutive twelve (12) months, use tax applies to the fair market value of the vehicle at that time unless tax was paid to another state in an amount equal to, or greater than, the tax owed to Idaho. Special rules apply to new residents of Idaho. See Rule 107 of these rules. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

107. VEHICLES AND VESSELS - GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS (RULE 107).

01. In General. This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. Refer to Rule 106 of these rules for general information on purchases, sales, rentals, and leases of motor vehicles. (3-6-00)

02. Gifts of Motor Vehicles. When the following facts clearly establish that a motor vehicle is being transferred as a gift from the titleholder to another, the vehicle can be transferred tax exempt if: (7-1-93)

a. No money, services, or other consideration is exchanged between the donor and recipient at any time. (7-1-93)

b. The recipient assumes no indebtedness. (7-1-93)

c. The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)

d. The donor and recipient complete and sign a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, and submit it to the county assessor or the Idaho Transportation Department along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit: (2-18-02)

i. A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county assessor or his representative and attached to the affidavit; or (2-18-02)

ii. The back of the title may be marked as a gift and signed by the donor. (2-18-02)

03. Nonresidents. A nonresident does not owe use tax on the use of a motor vehicle which is registered or licensed under the laws of another state or nation, is not used in Idaho more

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than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection, a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period.

(2-18-02)

04. New Residents. A new resident of Idaho does not owe tax on the use of household goods, personal effects and privately owned motor vehicles, if he acquired them while he resided in another state and used them primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled in a state that does not impose a general sales and use tax will be required to complete and sign a Three Month Exemption Claim Form ST-102 and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer. (2-18-02)

a. If the vehicle was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)

b. Exclusion from the tax applies only to motor vehicles owned by an individual. A privately owned motor vehicle is one which is owned by, and titled to, a private individual or individuals. (3-6-00)

05. Military Personnel. Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property. The exemptions discussed in this rule apply equally to military and nonmilitary personnel. A military person with a home of record other than Idaho is considered to be a nonresident. A military person whose home of record is Idaho is considered to be a resident of this state. Example: A military officer with a home of record in Oregon brings a vehicle purchased in Germany to Idaho upon being stationed at Mountain Home Air Force Base. During his first year at Mountain Home, the vehicle is present in Idaho for more than ninety (90) days. The exemption provided to nonresidents, as discussed in Subsection 107.03 of this rule, does not apply. Use tax applies to the fair market value of the vehicle. (7-1-93)

06. Tax Paid to Another State. When sales tax has been properly imposed by another state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. (7-1-93)

a. If the amount paid to the other state is less, Idaho tax is due to the extent of the difference, unless some other exemption applies. The owner must provide evidence that the tax was paid to the other state. A registration certificate or title issued by another taxing state is sufficient evidence that tax was imposed at the other state's tax rate. (7-1-93)

b. Example: A Wyoming resident buys a vehicle there for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his Wyoming title to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to Wyoming was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the ~~six~~ five hundred dollars (\$~~6500~~) tax due Idaho. The assessor will collect ~~three~~ two hundred dollars (\$~~3200~~) tax. (~~3-20-04~~)()

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c. Example: A vehicle was purchased by a Colorado resident two (2) months before moving to Idaho. The applicant paid three percent (3%) Colorado state sales tax, one and six tenths of one percent (1.6%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total Colorado general sales tax paid was six and two tenths percent (6.2%). Since the Idaho tax rate is ~~six~~ five percent (6.5%), no tax is due Idaho because the amount of tax paid to Colorado exceeds the amount owed Idaho. ~~(3-20-04)~~(____)

d. A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the motor vehicle from tax. (7-1-93)

e. Example: A church buys and titles a vehicle in Utah. The Utah sales tax law exempts the purchase of the vehicle from sales tax. The church later titles the vehicle in Idaho. Sales tax must be paid on the fair market value of the vehicle when it is titled in Idaho. (7-1-93)

f. Taxes paid to another nation cannot be offset against the taxes owed to Idaho. (7-1-93)

07. Sales to Family Members. The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters. Relatives of the second degree of consanguinity do not include persons who are related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

a. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor or his representative and attached to the affidavit. (2-18-02)

b. This exemption does not apply if the seller did not pay tax when he acquired the vehicle. (7-1-93)

c. Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollars (\$10,000) purchase price of the vehicle. ~~(7-1-93)~~(____)

08. Sales to American Indians. An enrolled American Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and

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sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (2-18-02)

09. Bulk Sale Transfers. A transfer or sale of a motor vehicle as part of a bulk sale of assets or property, as defined by Rule 099 of these rules, is exempt from tax. The buyer must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must attach a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. (2-18-02)

10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho. (5-3-03)

a. Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), off-highway motorcycles, and snowmobiles for use out of this state, even though delivery is made within this state are exempt from tax when: (5-3-03)

i. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and (5-3-03)

ii. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve-month period. (5-3-03)

b. To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST104-MV. (5-3-03)

c. This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, or inflatable boats regardless of length when sold without a motor. (5-3-03)

d. For purposes of Subsection 107.10 of this rule, an ATV means any recreational vehicle with three (3) or more tires, weighing under eight hundred fifty (850) pounds, forty-eight (48) inches or less in width, having a wheel base of sixty-one (61) inches or less, and traveling on low pressure tires of less than ten (10) psi. (3-20-04)

e. For purposes of Subsection 107.10 of this rule, a vessel means any boat intended to carry one (1) or more persons upon the water which is either: (3-20-04)

i. Sold together with a motor; or (5-3-03)

ii. Eleven (11) feet in length or more, not including canoes, kayaks, or inflatable boats unless such canoe, kayak, or inflatable boat is sold together with attached motor. (5-3-03)

11. Motor Vehicles and Trailers Used in Interstate Commerce. The sale of motor

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vehicles with a maximum gross registered weight of over twenty-six thousand (26,000) pounds and trailers are exempt from sales or use tax when they are purchased to become part of a fleet of vehicles registered under the International Registration Plan, or similar proportional or pro rata registration system, and they will be used in interstate commerce with at least ten percent (10%) of the fleet miles operated outside this state. The owner must complete and sign the Sales Tax Exemption Certificate - Vehicle/Vessel Form ST-104MV, and provide it to the seller, the Idaho Transportation Department or the county assessor when applying for title transfer. See Rule 101 of these rules. (5-3-03)

12. Related Party Transfers and Sales. Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to Rule 099 of these rules. The new owner must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to submit to the Idaho Transportation Department or county assessor when applying for title transfer. (2-18-02)

(BREAK IN CONTINUITY OF SECTIONS)

109. AMUSEMENT DEVICES (RULE 109).

01. Currency Operated Amusement Devices. "Amusement device" means all currency or token operated machines and devices used for amusement or entertainment. This definition includes, but is not limited to, game machines; pool tables; jukeboxes; electronic games; video or cinematic viewing devices; crane, rotary, and pusher machines; and similar devices. It does not include vending machines that are used to sell tangible personal property or noncurrency operated machines or games described in Subsection 109.03 of this rule. (6-30-95)

02. Requirement to Obtain Permit. The owner or operator of amusement devices is required to obtain a seller's permit if he is making retail sales other than the use of currency or token operated amusement devices. If the owner or operator is not making such other retail sales, he need not obtain a seller's permit, but must obtain an amusement device permit for each device in service. (6-30-95)

a. From July 1, 1995 to June 30, 2004, owners or operators of amusement devices were required to pay a fee of thirty-five dollars (\$35) per machine in service or use. The fee for permits purchased for the year beginning July 1, 2004, is forty-two dollars (\$42). Beginning July 1, 2005, the fee for permits will be thirty-five dollars (\$35). The fee will change by an amount proportional to any change in the sales tax rate. The formula to apply to calculate the permit fee is seven hundred dollars (\$700) x tax rate. For a ~~six~~ five percent (~~65~~%) tax rate the amount is therefore seven hundred dollars (\$700) x ~~six~~ five percent (~~65~~%) = ~~forty-two~~ thirty-five dollars (\$~~42~~35). (3-16-04)(____)

b. Upon receiving the appropriate payment, the Tax Commission will issue to the owner or operator of one or more amusement devices, a permit for each such device in service. A separate permit on each device in service is required. The permit shall be affixed near the currency slot of the machine in such a manner that it is easily visible. Permits are transferable

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from one person to another after written notice of the transfer is received and acknowledged by the Tax Commission. Permits may be transferred from a machine that is no longer in service to another machine owned or operated by the same person. An amusement device permit is not valid unless the name and business address of the owner or operator is typed or printed in black ink on the face of the permit. (3-16-04)

c. Video amusement devices may have more than one (1) monitor and be designed to be operated independently by more than one (1) person. In such cases a separate permit is required for each monitor. (6-30-95)

d. Amusement device permits must be renewed annually. Annual permits are valid from July 1 through June 30. Permits must be renewed on or before July 1 by the owner or operator of the amusement devices. Amusement devices acquired after July 1 or placed in service before the next July 1 will require the appropriate fee for a full-year permit. (3-16-04)

03. Noncoin Operated Amusement Machines or Games. Charges for the use of amusement machines or games which are not currency or token operated are subject to tax at the prevailing rate times one hundred percent (100%) of the gross proceeds received for the use of the device. This applies regardless of the method the owner or operator uses to determine the charge, such as by the hour or by the game. The owner or operator of noncurrency or nontoken operated amusement machines or games is required to obtain a seller's permit if he is charging for the use of such machines. (6-30-95)

04. Cross-Reference. See Rule 095 of these rules regarding purchases of Money-Operated Dispensing Equipment. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

126. SALES TAX COLLECTED BY THE STATE LIQUOR DISPENSARY (RULE 126).

01. Liquor Subject to Sales Tax. All sales of liquor which includes alcohol, spirits, beer, and wine as defined in Sections 23-105(g), 23-1303(a), and 23-1001(a), Idaho Code, unless specifically exempt, are subject to the tax measured by the sales price. (7-1-93)

02. Sales for Resale. In the case of sales to persons licensed under the provisions of Title 23, Chapter 9, Idaho Code, only those purchases for resale by an establishment licensed to sell liquor will be exempt from the tax. If the licensee purchases liquor for any purpose other than for resale, the licensee is subject to the use tax. (7-1-93)

~~**03. Posting Amount of Tax.** The liquor dispensaries shall cause to be posted, in addition to the current price, the amount of the tax and the total cost including the tax. For example:~~

<i>Brand X Whiskey</i>	<i>\$7.00</i>
<i>Idaho Sales Tax</i>	<i>.42</i>

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Total Price	\$7.42
------------------------	-------------------

~~(3-20-04)~~

~~**04. Identifying Code.** If codes are used to identify the brands and/or prices of liquor, the price might be posted as follows:~~

Code 64	\$7.00
Idaho Sales Tax	.42
Total Price	\$7.42

~~(3-20-04)~~

053. Reporting. The superintendent of the State Liquor Dispensary shall forward monthly to the Tax Commission a report of all sales tax collected for the preceding month. All sales tax collected by the superintendent of the State Liquor Dispensary and by contract private liquor stores, when the product is supplied by the State Liquor Dispensary, shall be credited directly to the liquor account, and shall not become a part of the sales tax account. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (RULE 128).

01. In General. This rule applies to proper documentation for exempt purchases of tangible personal property for resale and all other exemption claims for taxable transactions enumerated in Section 63-3612, Idaho Code. All forms approved by this rule may be reproduced. (3-6-00)

02. Burden of Proof. All sales made within Idaho are presumed to be subject to sales tax unless an exemption is established. The burden of proving that a sale is not subject to tax is upon the seller. The seller may overcome the presumption by obtaining a written statement from the purchaser on a form approved by the State Tax Commission. When a valid certificate is obtained from the purchaser, the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is taxable to the purchaser as a matter of law in the particular instance claimed on the certificate. (3-6-00)

03. Qualified Buyers for Purposes Other Than Resale. Producers, certain contractors and exempt buyers may claim an exemption from paying sales tax on the purchase of goods and other taxable transactions by qualifying under one (1) or more of the provisions of Sections 63-3622A through 63-3622NN, Idaho Code, completing, and providing the required form to the seller. (3-6-00)

04. Qualified Buyers for Purposes of Resale. The resale exemption may be claimed by the following purchasers when buying goods for resale: (3-6-00)

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a. A retailer or wholesaler doing business in Idaho who holds an Idaho seller's permit number. An Idaho seller's permit number has nine (9) digits followed by an "S". Example: 000123456-S. If the number contains any other letter or is an inappropriate number, such as a Federal Employer Identification Number, the certificate is not valid. (3-6-00)

b. A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. (3-6-00)

c. An out-of-state retailer who makes not more than two (2) sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. (3-6-00)

05. Description and Proper Execution of Approved Forms. In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. They must comply with any additional requirements provided in this rule or on the form in question. (3-6-00)

a. To claim a resale exemption on or after July 1, 2000, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate - Multi-jurisdiction. Form ST-103, Certificate of Purchase for Resale, is no longer provided by the State Tax Commission but is valid if it was executed prior to July 1, 2000 and complies with that form's instructions. The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for and the nature of the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include a seller's permit number. (3-6-00)

b. Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept Sales Tax Exemption Claim Form-Grocer, Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101, ST-103, or ST-104) on file from the purchaser. Form ST-111 must include the seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. (3-6-00)

c. Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G, may be completed only by federal, Idaho State, and local government agencies making cash purchases and must be furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/purchaser. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a travelling government employee nor for any other reasons enumerated on the form. (3-6-00)

d. Sales Tax Exemption on Lodging Accommodations Claimed by Government Employees Using Credit Card Payment, Form ST-104-HM, applies when a credit card company will directly bill to and be paid by a federal, Idaho State, or local government agency employer. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the government agency employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. (3-6-00)

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e. The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. (3-6-00)

f. Sales Tax Exemption Certificate - Vehicle, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer. (3-6-00)

g. Motor Vehicle Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an Indian Tribe within the boundaries of an Indian reservation, or when making a gift of a motor vehicle, boat or RV. (3-6-00)

h. Truck Camper, Transport Trailer, Office Trailer and Untitled Boat Certificate, Form ST-108, is required by any person titling, registering, or licensing certain vehicles on which sales tax was not paid. Of those vehicles mentioned on the form, only the sale of a transport trailer or an office trailer may qualify for an occasional sale exemption, as described in Rule 099 of these rules, and the exemption requires the proper execution of ST-108 to make the claim. (3-15-02)

i. Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit, Form ST-133CATS, is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles which are included in the bulk sale of a business' assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no change other than owners' equity. (3-6-00)

j. Sales Tax Resale and Exemption Certificate, Form ST-101, is required on or after July 1, 2000 for tax-free purchases claimed under the production exemption. Form ST-104, Sales Tax Exemption Certificate, is no longer provided by the State Tax Commission but is valid if it was executed prior to July 1, 2000, and complies with that form's instructions. In lieu of Forms ST-101 or ST-104, retailers may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language: (3-6-00)

I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, manufacturing, processing, fabricating or farming or as a repair part for equipment used primarily as described above.

This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.

Any person who signs this certification with the intention of evading payment of tax is

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guilty of a misdemeanor.

NATURE OF BUSINESS

BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 or ST-104 is on file with the vendor, then each exempt sale must be documented as described in this subsection. (3-6-00)

06. Seller's Responsibility -- Purchases for Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, or a Form ST-103, Certificate of Purchase for Resale, properly executed prior to July 1, 2000, if the customer intends to resell the items in the regular course of business. The general character of the goods purchased for resale must be those displayed on the certificate given to the retailer. (3-6-00)

a. Example: A restaurant operator completes an ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator purchases sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. (3-6-00)

b. Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. (3-6-00)

07. Seller's Responsibility - Purchases Claimed Exempt From Sales Tax for Reasons Other Than Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, has been received, or a Form ST-104, Sales Tax Exemption Certificate properly executed prior to July 1, 2000, if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. (3-6-00)

a. A retailer must collect tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a purchaser claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: (3-6-00)

- i. Hand tools with a unit price not in excess of one hundred dollars (\$100); (3-6-00)
- ii. Maintenance and janitorial equipment and supplies; (3-6-00)
- iii. Office equipment and supplies; (3-6-00)

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- iv. Selling and distribution equipment and supplies; (3-6-00)
- ~~v. Property used in research and development;~~ (~~3-6-00~~)
- vi. Property used in transportation activities; (3-6-00)
- vii. Equipment or other property used to make repairs; (3-6-00)
- viii. Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; (3-6-00)
- ~~ix. Licensed motor vehicles;~~ (3-6-00)
- x. Aircraft; and (3-6-00)
- xi. Recreational vehicles. (3-6-00)

b. Example: A farmer completes an ST-101 claiming a production exemption on the purchase of a fifteen dollar (\$15) hammer and a case of motor oil. The retailer must collect the sales tax on the sale of the hammer, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the hammer because, as a matter of law, the sale of hand tools with a unit price of one hundred dollars (\$100) or less ~~are~~ is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). (~~3-6-00~~)()

c. Additionally, when a retailer sells merchandise which qualifies for the production exemption in Section 63-3622D, Idaho Code, and which may be used for either a taxable or a nontaxable purpose, such as the sale of a battery which is taxable when used in a car and not taxable when used in a farm tractor, the retailer is relieved of the liability for and responsibility of collecting the sales tax if the purchaser provides a description on the exemption certificate of the intended nontaxable use of the item. (3-6-00)

d. A retailer cannot rely on an exemption certificate obtained from a purchaser when the law does not provide an exemption from the tax for the purchaser, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state. (3-6-00)

e. Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (3-6-00)

08. Timely Acceptance of Certificates. A seller may accept a certificate from a

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purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. However, if no approved certificate is obtained from the purchaser in the manner provided or permitted by this rule, the sale is presumed to be taxable. (3-6-00)

a. Certificates obtained by a seller at a time subsequent to but not within a reasonable time after the time of sale will be considered by the State Tax Commission in conjunction with all other evidence available to determine whether or not the seller has established, by clear and convincing evidence, that a sales tax transaction is exempt from tax. For the purposes of this rule, evidence is clear and convincing when it shows that the truth of the facts asserted is highly probable. Evidence which indicates that it is more likely than not the fact is true is not sufficient to establish clear and convincing evidence. (3-6-00)

b. Example: A retailer sells goods to a customer without charging the sales tax but does not obtain an ST-101 from the customer. Instead, the customer writes his seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the seller's permit number written on the invoice is clear and convincing evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer is in a business which sells the type of goods purchased from the retailer. Even if it is more likely than not that the customer intended to resell the goods, the retailer has not established, solely by the existence of the seller's permit number, that it is highly probable that the goods were for resale. The retailer is liable for the tax on the sale. (3-6-00)

c. Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish clear and convincing evidence that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. Although it is more likely than not that the customer is a farmer, the retailer has not provided clear and convincing evidence that the hay was purchased for use in a farming operation. The retailer is liable for the tax on the sale. (3-6-00)

d. When a Notice of Deficiency Determination has been issued to a seller by the State Tax Commission and the seller petitions for redetermination as provided by Rule 121 of these rules, he may submit certificates obtained from his customers as evidence of exemption claims, but only if the certificates are presented to the State Tax Commission within ninety (90) days of the date of the Notice of Deficiency Determination. (3-6-00)

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IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0502

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105 and 63-3624, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The proposed Rule 47 has been amended from the proposed text in Section 47.11 because of a public request to clarify that sales of jet boating trips are not taxable if the trips occur on navigable waters and to make a technical correction.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 634 through 640.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact James Husted at (208) 334-7530.

DATED this 2nd day of November, 2005.

James Husted, Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

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The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 037: Amend Rule 037 to conform to federal law.

Rule 047: Amend Rule 047 to state that sales of rafting trips aren't taxable if they occur on navigable waters. To add a statement that judicial determinations could change this ruling. And to change the reference to the 5% rate to conform to statute.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are being made to conform to state and federal statutory changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

REVENUE & TAXATION

037. AIRCRAFT AND FLYING SERVICES (RULE 037).

01. Definitions. For the purposes of this rule, the following terms have the following meanings: (7-1-94)

~~a. Certified Air Carrier. Any person who directly or indirectly or by a lease or any other arrangement, offers air transportation and is authorized by the FAA to operate as an air carrier under an air carrier operating certificate.~~ (7-1-94)

~~b. Regular Scheduled Flight. A flight which is operated regularly between two (2) points and is listed in a published schedule which is readily available to the public.~~ (7-1-94)

~~c. On Demand Flight. The hiring on demand of an aircraft with a pilot to transport freight or passengers on an unscheduled flight.~~ (7-1-94)

~~d. Recreational Flight. The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, photography, wildlife viewing, hot air balloon rides, or other similar activities.~~ (7-1-94)()

~~e. Intrastate Flight. A flight where the origin and destination points are within Idaho.~~ (7-1-94)

~~f. Freight. Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule.~~ (7-1-94)()

~~g. Transportation of Passengers. The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point.~~ ()

~~h. Nonresident Individual. An individual as defined by Section 63-3014, Idaho Code.~~ (7-1-94)

~~i. Nonresident Businesses and Other Organizations. A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state.~~ (3-20-04)

~~j. Day. For the purpose of this rule any part of a day is a day.~~ (7-1-94)

~~02. Sales Subject to Tax. Sales or use tax applies to the total sales price of:~~ (7-1-94)

~~a. An aircraft sold at retail, except as provided by Subsection 037.03 of this rule;~~ (2-18-02)

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~~**b.** The receipts from intrastate on demand flights, except as part of a regularly scheduled flight by a certified air carrier, under the authority of the FAA; (2-18-02)~~

~~**c.** The receipts from transporting passengers for a recreational flight; or (2-18-02)~~

~~**d.** The sale of parts or other tangible personal property used to repair or maintain an aircraft not held for resale, except as provided by Subsection 037.05.e. of this rule. (2-18-02)~~

032. Sales of Aircraft Not Subject to Tax. Sales of aircraft are taxable unless an exemption applies. ~~Sales or use tax does not apply to~~ Section 63-3622GG, Idaho Code, provides an exemption for the sale, lease, purchase, or use of an aircraft; (7-1-94)()

a. Primarily used to transport passengers or freight for hire; (2-18-02)

b. Primarily used for emergency transportation of sick or injured persons; or (2-18-02)

c. Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: (3-20-04)

i. The aircraft is sold to a nonresident as defined in Subsection 037.01.g~~c.~~ or 037.01.h~~d.~~ of this rule; and (3-20-04)()

ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period. (3-20-04)

03. Federal Law Prohibits States From Taxing Sales of Air Transportation. See 49 U.S.C. Section 40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. ()

04. Rentals and Leases of Aircraft. The rental or lease of an aircraft without operator is a sale subject to sales tax, other than as provided in Subsection 037.03~~2~~ of this rule. See Rule 024 of these rules. (2-18-02)()

~~**05. On-Demand Flying Services.** The charge for intrastate on demand flying of passengers or freight is subject to sales tax. The sales tax applies to the total amount charged for the intrastate charter flight, including standby time for a pilot, crew, or other separately stated charges. (7-1-94)~~

~~**a.** Example: A customer hires a flight on demand from Boise to Coeur d'Alene, Idaho. During the flight the pilot stops briefly in Spokane, Washington, at the passenger's request. In this example the flight is an intrastate on demand flight of passengers for hire and is subject to sales tax. The measure of the sales tax is the total amount charged for the on demand flight. (7-1-94)~~

~~**b.** Example: A customer hires a flight on demand from Boise, Idaho, to Spokane, Washington. During the flight the pilot stops briefly in Coeur d'Alene, Idaho, at the passenger's~~

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~~request. In this example the flight is an interstate on demand flight, even though the aircraft landed briefly in Idaho. Sales tax will not apply to the flight because it is an interstate flight.~~

~~(7-1-94)~~

~~**e.** Example: A company hires a flight on demand from Boise, Idaho, which is to transport one (1) passenger to Pocatello, Idaho, and the remaining passengers to Salt Lake City, Utah. The amount charged to transport the passenger to Pocatello is subject to sales tax as an intrastate on demand flight. The charge for flying the remaining passengers to Salt Lake City is not subject to sales tax, as it is an interstate flight.~~

~~(7-1-93)~~

~~**d.** Example: A company hires a flight on demand from Boise to Pocatello, Idaho, and requests that the plane then fly the passenger to Salt Lake City, Utah, later in the day. Two (2) on demand flights have occurred. The first is an intrastate flight from Boise to Pocatello, subject to sales tax. The second flight is interstate, Pocatello to Salt Lake City, and not subject to sales tax.~~

~~(7-1-93)~~

~~**e.** Aircraft which are purchased, rented, leased, or withdrawn from resale inventory to be used primarily for on demand flights are not subject to sales or use tax. Sales or use tax does not apply to the sale or use of repair and replacement materials and parts which will become component parts of such aircraft. Sales or use tax does apply to the sale or use of tools and equipment utilized in performing the repair or maintenance.~~

~~(2-18-02)~~

~~**065. Aerial Contracting Services.** Sales tax does not apply to the amount charged by the owner or operator of an aircraft to perform aerial contracting services such as aerial logging, applying agricultural products or other products by aerial spraying or dumping, or other similar activities not involving the transportation of freight or passengers. However, if the service involves the hauling of freight or passengers who are not employees of the flying service, the flight is deemed an on demand flight. Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting services. Such businesses are not primarily engaged in the transportation of freight.~~

~~(7-1-94)()~~

~~**a.** Aircraft purchased, rented, or leased for aerial contracting are subject to sales tax. It makes no difference whether or not the service is provided to a government agency or a private individual or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property.~~

~~(7-1-94)~~

~~**b.** When aircraft held for resale are used by the owner, who is an aircraft dealer, for aerial contracting services, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service.~~

~~(7-1-94)()~~

~~**076. Air Ambulance Service.** Charges for the emergency transportation of sick or injured persons, including standby time, are not subject to sales tax.~~

~~(7-1-94)~~

~~**087. Flying Instructions.** Flying instructions or lessons which may include solo flights are a service and the fees are not subject to sales tax.~~

~~(7-1-94)~~

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a. Aircraft purchased, rented, or leased to be used primarily for flying instruction are subject to sales or use tax. (7-1-94)

b. When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (7-1-94)

~~098. Recreational Flights. Fees charged for recreational flights are taxable as provided by Subsection 037.02.c. of this rule. Sales and purchase of Aircraft purchased, rented, or leased used~~ primarily for providing recreational flights are subject to sales or use tax. (7-1-94)()

~~109. Aircraft Held for Resale.~~ Aircraft purchased and held for resale become taxable when used for purposes other than demonstration or display in the regular course of business. (7-1-94)

a. Rentals of aircraft held for resale are taxable as provided by Subsection 037.04 of this rule. (7-1-93)

b. When an aircraft held for resale is used for a taxable purpose, the dealer owes tax on that use. The use tax applies to a reasonable rental value for the time the aircraft is used. (7-1-94)

c. Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The aircraft dealer must provide the supplier with a properly completed resale certificate. See Rule 128 of these rules. (2-18-02)

~~140. Fuel.~~ The sale or purchase of fuels subject to motor fuels tax, or on which a motor fuels tax has been paid, pursuant to Chapter 24, Title 63, Idaho Code, is exempt from sales and use tax. (7-1-94)

~~12. Records Required. The owner or operator of an on-demand flying service must give his customer a receipt and keep a copy for his records, showing the customer's name and address, date of flight, its purpose, and its origin and destination. If the flight or transaction is subject to sales tax, the tax must be separately stated on the receipt.~~ (7-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

047. OUTFITTERS, GUIDES, AND LIKE OPERATIONS (RULE 047).

01. In General. Fees charged for services performed by outfitters, guides, dude ranches, hunting and fishing lodges, or camps are charges for the use of, or privilege of using, tangible personal property or other facilities for recreation. Fees charged by outfitters and like operations for providing outdoor recreational services are subject to sales tax. (7-1-93)

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a. An outfitter is any person who holds himself out to the public for hire to conduct outdoor recreational activities, including: hunting animals or birds; float or power boating of rivers, lakes, and streams; fishing; hiking; skiing; hazardous desert or mountain excursions; and other recreational activities. (7-1-93)

b. A guide is a person employed by an outfitter to furnish personal services for the conduct of outdoor recreational activities. (7-1-93)

02. Services Performed in More Than One State. When an outfitter's service to a client takes place in more than one (1) state, and the customer receives an invoice from the outfitter that separately displays the Idaho portion of the charges from those of the other states, only the Idaho portion is subject to Idaho sales tax. (7-1-93)

a. When an outfitter's service to a client takes place in more than one (1) state and the outfitter fails to separately state the Idaho portion of the charges from those of other states, sales tax must be charged on the total amount. (7-1-93)

~~**b.** If the service takes place on a river which divides Idaho from another state, tax must be charged on fifty percent (50%) of the fee attributed to that portion of the trip. (7-1-93)~~

~~**c.** Example: A one hundred (100) mile float trip consists of fifty (50) miles on Idaho rivers, twenty (20) miles on another state's river, and thirty (30) miles on a river which divides Idaho from another state. If the outfitter's invoice to his client separately states the Idaho portion of the charge from the out-of-state charges, only the Idaho fees will be subject to Idaho sales tax. The invoice should show the following:~~

FLOAT TRIP	FEE	IDAHO SALES TAX
50 miles Idaho river	\$500	\$ 30.00 (on 100%)
20 miles out of state	\$200	\$ 0.00 (none)
30 miles border river	\$300	\$ 9.00 (on 50%)

(3-20-04)

~~**03. Charter Aircraft.** When an outfitter hires a charter aircraft to transport his customer within Idaho, the outfitter must charge the customer tax on the fee for the charter service. The outfitter will provide the vendor of the services with a properly completed resale certificate. (7-1-93)~~

043. Government Use Fee. Land and water use fees imposed on outfitters, such as the three percent (3%) fee paid to the U.S. Forest Service, are not subject to the sales tax when separately stated on the customer's invoice. (6-23-94)

054. Prepaid Travel Expense. When an outfitter's invoice separately states prepaid travel expenses such as lodging, and the outfitter has paid sales tax, when applicable, to vendors providing the travel services, the outfitter will not be required to tax that portion of his bill to the customer. Example: An outfitter's bill to a client for a seven (7) day hunt and prepaid travel

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expenses should read:

SEVEN-DAY HUNT	FEE	IDAHO SALES TAX
Airline Ticket (New York/Boise)	\$ 500	\$ 0.00 (none)
1 Night Lodging, Motel X Boise (Outfitter has paid tax to Motel X)	\$ 50	\$ 0.00 (none)
7 Day Hunt	\$1,500	\$ 90 75.00 (on 100%)

(~~3-20-04~~)()

065. Lodging. If an outfitter provides overnight lodging for a client at a facility operated by the outfitter, charges for the lodging are subject to sales tax and hotel/motel taxes as provided by Idaho Hotel/Motel Room Sales Tax Rule IDAPA 35.01.06.011. (7-1-93)

076. Equipment Rental. When an outfitter rents equipment such as ground sheets, sleeping bags, rain gear, boots and dry bags, to his client for use during the recreational activity, sales tax must be charged on the equipment rental. (7-1-93)

087. Game Processing, Packing, and Taxidermy. When an outfitter bills a client for game processing, packing, or taxidermy services, sales tax must be charged on the entire fee to the client. The outfitter will provide the vendor of the services with a properly completed resale certificate. (7-1-93)

098. Prepurchased Hunting and Fishing Licenses. When an outfitter purchases a hunting or fishing license for a client and separately states the fee on the billing to the client, no sales tax applies to the license fee. (7-1-93)

109. Travel Agency Services. (7-1-93)

a. When outfitter services are purchased by a client through a travel agency and the outfitter bills the travel agency for the fee, the amount billed to the travel agency is subject to tax. In this case, the agency is acting as an agent for the client and the additional fee charged by the agency to the client is not subject to the sales tax. (7-1-93)

b. When outfitter services are arranged for a client by a travel agency but the outfitter bills the client, the amount billed to the client is subject to tax. In this case, the agency is acting as the agent of the outfitter and the fee paid to the travel agency by the outfitter cannot be deducted from the measure of the taxable sale. Even if the outfitter separately states the travel agency fee on his billing to the client, he must charge tax on the total amount. (7-1-93)

c. When an outfitter, Outfitter X, books a client and hires a second outfitter, Outfitter Y, to provide the services to the client, Outfitter X must charge the client tax on the full fee. Outfitter Y must obtain a resale certificate from Outfitter X. If this form is not obtained, Outfitter Y must charge sales tax on the services provided to Outfitter X. (7-1-93)

110. Purchases by Outfitters and Like Operations. (7-1-93)

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a. Outfitters must pay tax when purchasing equipment and supplies for use in their business. Examples include boats, rafts, oars, motors, horses, tack, llamas, transportation equipment, camp gear, cooking gear, animal feed, brochures, and promotional give-away items.

(7-1-93)

~~**b.** When an outfitter purchases food that will be prepared and furnished to clients, no sales tax applies if the outfitter provides a resale certificate.~~

~~(7-1-93)~~

eb. When an outfitter maintains an inventory of gear, such as ground sheets, sleeping bags, boots, rain gear, and dry bags, which is exclusively held for rental to clients, the outfitter may purchase the gear without tax in the manner previously described. The outfitter may purchase gear without paying tax only if the gear is rented to clients as a separate line item on the invoice to the client and sales tax is charged to the client. If gear is provided to clients as a part of the outfitter package fee, the outfitter must pay tax when purchasing the gear.

(3-20-04)

~~**d.** When an outfitter purchases the services of a charter aircraft to transport his clients within Idaho, he will not pay tax to the charter service by providing the service with a properly completed resale certificate. The outfitter must then charge tax to his client on this fee.~~

~~(7-1-93)~~

ec. When an outfitter arranges travel accommodations for his client and pays the vendors of ~~the~~ lodging, and restaurant or catered meals ~~and services~~, he must pay sales tax, as well as other applicable hotel/motel taxes, to the vendors. When an outfitter purchases food that he will prepare and furnish to clients, no sales tax applies if the outfitter provides a resale certificate. The outfitter must then collect a tax from his client on the sale of the furnished food. Alternatively, an outfitter may buy food and pay tax on the purchase. Under this alternative, the outfitter will include the cost of the food in his nontaxable charges to his client.

~~(7-1-93)~~()

fd. When an outfitter purchases the services of a taxidermist or meat processor on behalf of his client, he should not pay tax to the vendor by providing the vendor with a properly completed resale certificate. The outfitter must charge tax to his client on this fee.

(7-1-93)

11. Federal Preemption. The National Maritime Transportation Security Act of 2002, enacted November 25, 2002, prohibits the states from imposing tax on any vessel or other water craft, or its passengers or crew if the vessel or water craft is operating on any navigable waters. The Tax Commission interprets this statute to mean that states are prohibited from taxing sales of rafting and jet boating trips if they occur on navigable waters. See 33 U.S.C. Section 5. If Congress repeals the preemption sales of rafting trips will become taxable on the effective date of the repeal. This interpretation is subject to judicial review and could change, depending on rulings from state or federal courts.

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REVENUE & TAXATION

IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0503

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105 and 63-3624, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 641 through 650.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact James Husted at (208) 334-7530.

DATED this 2nd day of November, 2005.

James Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

The Following Notice Was Published With The Proposed Rule

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AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 070: Amend Rule 070 to state that the Commission may issue temporary permits that are valid for no more than 90 days.

Rule 079: Amend Rule 079 to conform to Section 63-3622RR, Idaho Code.

Rule 099: Amend Rule 99 to correct the statement in Subsection 099.07 and add a new subsection clarifying amendment to Section 63-3622K, Idaho Code.

Rule 102: Amend Rule 102 to conform to Section 63-3622RR, Idaho Code.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

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070. PERMITS (RULE 070).

01. Requirements for Obtaining Permits. All retailers, wholesalers and other persons required to collect sales tax must obtain a permit from the Tax Commission before engaging in business. No fee is required for the initial sales tax permit. Application forms may be obtained by contacting any Tax Commission office. (7-1-93)

a. Every wholesaler, retailer or other person required to collect sales tax must apply for a permit on the form prescribed by the Commission. The application for a permit must list each place of business operated by the same person, firm or corporation. The permit must be posted in a conspicuous place at each location for which it is issued. A separate permit number must be obtained for each business name. (7-1-93)

b. Example 1: Corporation A operates the businesses named B, C, and D. Three (3) permit numbers are required, regardless of how many locations operate using the business names B, C, and D. (7-1-93)

c. Example 2: Corporation E operates three locations, using the business name F. Only one permit number is required, since all locations have the same business name. (7-1-93)

02. Out-of-State Seller. An out-of-state seller desiring to conduct business as a seller within Idaho must obtain a seller's permit. This requirement also applies to any salesmen user's agents who solicit orders for nonresident sellers. (7-1-93)

03. Sales in Leased Premises. When any established business leases a portion of its shelves, counters or floor space to other persons selling tangible personal property to consumers, the sales from such leased department may be included in the tax return of the lessor. When the lessee conducts the leased department in the same manner as a separate business and keeps separate business records, the lessee must apply for a sales tax permit. (7-1-93)

04. Cancellation of Sales Tax Permits. It is the responsibility of a permit holder to notify the Tax Commission in writing immediately upon any change in ownership of the permitted business or upon complete or partial termination of the permit holder's business. Complete or partial termination of a permit holder's business includes the lease of part or all of the business or business location to another party who will be responsible for remitting the sales tax. This notice must include the following information. (7-1-93)

a. This notice must include the date of closure, date of sale or date of lease. If the permit holder does not continue to operate a business under that permit number, the notice must state that the permit should be canceled. The permit holder must return the permit or send a written statement that the permit has been destroyed. If the permit holder has sold or leased his business, the notice must state the last day of operation and the name of the new owner or lessee. (7-1-93)

b. If this information is not furnished to the Tax Commission and the new owner or lessee continues operation of the business on the previous owner's or operator's permit, without filing for and obtaining a new permit, the original permit holder may be held responsible for all tax liability incurred during the period that the new owner or lessee operated a business under the

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previous owner's permit.

(7-1-93)

05. Suspension of Sales Tax Permits. The permit holder must notify the Tax Commission in writing of the anticipated discontinuation of a business due to seasonal operation or for any other reason. This notice must contain the date of closure and anticipated date of reopening. Upon receipt of this information, returns will be suspended during the period of closure.

(7-1-93)

06. Requirements of Holding a Seller's Permit. A seller's permit may be held only by persons actively engaged in making retail sales subject to Idaho sales tax. Any person holding a permit who fails to meet this requirement must surrender the permit to the Commission for cancellation. If a permit is held by a person who has reported no sales for a period of twelve (12) consecutive months, the Commission may revoke the permit and require the holder to return the permit to the Commission or provide a sworn statement that the permit has been destroyed by the holder.

(7-1-93)

07. Seller's Permit and Sales Tax Permit. The terms seller's permit and sales tax permit may be used interchangeably. Both refer to the permit issued to a person desiring to engage in business in Idaho as a retailer.

(7-1-93)

08. Temporary Seller's Permits. The Commission may issue temporary seller's permits that are valid for a limited period of time. The time period for which the temporary permit is issued will be shown on the face of the permit. No temporary seller's permit shall be issued for a period of time greater than ninety (90) days.

()

(BREAK IN CONTINUITY OF SECTIONS)

079. PRODUCTION EXEMPTION (RULE 079).

01. In General. The Sales Tax Act provides an exemption from sales and use taxes for certain tangible personal property used in production activities. The production activities include:

(7-1-93)

a. A manufacturing, processing, or fabrication operation devoted to producing tangible personal property for resale.

(6-23-94)

b. The business of custom farming or operating a farm or ranch for profit.

(7-1-93)

c. The business of contract mining or operating a mine for profit.

(6-23-94)

02. Qualifying Businesses. The production exemption applies only to a business or a separately operated segment of a business that primarily produces tangible personal property which is intended for ultimate sale at retail.

(7-1-93)

a. For the purposes of this rule, a separately operated segment of a business is a

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segment of a business for which separate records are maintained and which is operated by an employee or employees whose primary employment responsibility is to operate the business segment. (7-1-93)

b. The production exemption does not include the performance of contracts to improve real property, such as road or building construction, or to service-related businesses not devoted to the production of tangible personal property for ultimate sale at retail. (7-1-93)

03. Exempt ~~Property~~ Purchases. As applied to manufacturing, processing, mining, or fabrication operations, sales and purchases of the following ~~items of~~ tangible personal property are exempt, except as limited by other subsections of this rule: (7-1-93)()

a. Raw materials that become an ingredient or component part of the product which is produced. (7-1-93)

b. Equipment and supplies used or consumed primarily and directly in the production process and which are necessary or essential to perform the operation. To qualify, the production use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be used directly in the production process. (7-1-93)

c. Chemicals and catalysts consumed in the production process which are used directly in the process but which do not become an ingredient or component part of the property produced. (7-1-93)

d. Repair parts, lubricants, hydraulic oil, and coolants, which become a component part of production equipment. (7-1-93)

e. Fuel, such as diesel, gasoline, and propane used in equipment while performing production exempt activities. (7-1-93)

f. Chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries. (7-1-93)

g. Safety equipment and supplies required by a state or federal agency when used directly in a production area. (7-1-93)

h. Equipment such as cranes, manlifts, and scissorlifts used primarily to install production equipment. (7-1-93)

i. Equipment used primarily to fabricate production equipment. (7-1-93)

04. Production Process Beginning and End. The production process begins when raw materials used in the process are first handled by the operator at the processing plant or site. The production process ends when the product is placed in storage, however temporary, ready for shipment or when it reaches the final form in which it will be sold at retail, whichever occurs last. (7-1-93)

05. Taxable ~~Property~~ Purchases. The production exemption does not include any of

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the following:

(7-1-93)()

a. Motor vehicles required to be licensed by Idaho law. A motor vehicle required to be licensed, but not actually licensed, is taxable. A motor vehicle not required to be licensed is exempt under the production exemption only if it meets the tests in Subsection 079.03 of this rule. (7-1-93)

b. Repair parts for any equipment which does not qualify for the production exemption. (7-1-93)

c. A hand tool with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tool may be to production, how directly it may be used in the process, or how specialized it may be. (7-1-93)

d. Office equipment and supplies. (7-1-93)

e. Safety equipment and supplies used somewhere other than a production area, such as an office, or which are not required by a state or federal agency even if used in a production area. (7-1-93)

f. Equipment and supplies used in selling and distribution activities. (7-1-93)

g. Janitorial equipment and supplies, other than disinfectants used in the dairy industry to clean pipes, vats, and udders, and clean-in-place equipment and chemicals used in food processing or food manufacturing. (7-1-93)

h. Maintenance and repair equipment and supplies which do not become component parts of production equipment, such as welders, welding gases, shop equipment, etc. (7-1-93)

i. Transportation equipment and supplies. (7-1-93)

j. Aircraft of any type and supplies. (7-1-93)

k. Paint, plastic coatings, and similar products used to protect and maintain equipment, whether applied to production equipment or other equipment. (7-1-93)

~~**l.** Research equipment and supplies, all expenses for which the taxpayer claims the federal credit for incremental research expenses under Section 41 of the Internal Revenue Code.~~ (7-1-93)

~~**m.** Other incidental items not directly used in production.~~ (7-1-93)

~~**n.** Fuel used in equipment while performing activities that do not qualify for the production exemption.~~ (7-1-93)

~~**o.** Recreation-related vehicles regardless of use. Recreation-related vehicles are: snowmobiles; off-highway motorbikes and dual purpose motorcycles (a dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be operated~~

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legally on public roads and highways); motorcycles, motor scooters and motorized bikes; all-terrain vehicles (ATV's), not including tractors (a tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, tillage equipment, and other farm implements); portable truck campers designed for temporary living quarters; camping, park, travel, and fifth-wheel travel-type trailers designed to provide temporary living quarters; motor homes; buses and van-type vehicles converted to recreational use as temporary living quarters. Buses and vans are considered recreational vehicles if they have at least four (4) of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)

~~80.~~ Parts to repair recreation-related vehicles. (7-1-93)

~~92.~~ Equipment used primarily to construct, improve, alter or repair real property. (7-1-93)

06. Real Property. The production exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased with the intention of becoming improvements or fixtures to real property. (7-1-93)

07. Change in Primary Use of Property. If tangible personal property is purchased for a use which qualifies for the production exemption but later is used primarily for another purpose, it becomes taxable at its fair market value when it ceases to qualify for the exemption. For instance, a loader may be used primarily in a mining operation when purchased. If the primary use of the loader is later changed from mining to road building, it becomes taxable at its fair market value when it ceases to be used for mining. If tax is paid on tangible personal property because no exemption applies at the time of purchase, and the property later becomes eligible for the production exemption, no refund is due the owner. (7-1-93)

08. Transportation Activities. Equipment and supplies used in transportation activities do not qualify for the production exemption. (7-1-93)

a. Transportation includes the movement of tangible personal property over private or public roads or highways, canals, rivers, rail lines, through pipelines or slurry lines, or on private or public aircraft. (7-1-93)

b. Transportation includes movements of tangible personal property from one separate location which is a continuous manufacturing, processing, mining, fabricating or farming activity to another separate location which is a continuous exempt activity or process. (7-1-93)

c. Transportation includes movement of raw materials, except farm produce, from a point of initial extraction or severance or importation to a point where processing, manufacturing, refining or fabrication begins. See Rule 083 of these rules regarding farming. (3-15-02)

09. Exemption Certificate. To claim the production exemption the customer must complete an exemption certificate for the seller's records. See Rule 128 of these rules. (3-15-02)

10. Special Rules. Special rules apply to irrigation equipment, contractors, loggers,

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and farmers who act as retailers. Refer to the specific rules relating to those subjects. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

099. OCCASIONAL SALES (RULE 099).

01. Occasional Seller. Sales of tangible personal property by an occasional seller are exempt from sales and use tax. In order to qualify as an occasional sale, the seller must not make more than two (2) sales of tangible personal property in a twelve (12) month period, nor hold himself out as engaged in the business of selling tangible personal property. (7-1-98)

a. If the sale does not qualify as an occasional sale, the seller becomes a retailer, is required to register for an Idaho seller's permit, and must collect and remit sales tax. See Section 63-3610, Idaho Code. (7-1-98)

b. Proof of occasional sale. An occasional seller of tangible personal property must provide a written statement to the purchaser if requested. An occasional seller of a transport trailer or office trailer may use Form ST-108 to document his occasional sale claim. For occasional sales of other tangible personal property, the purchaser must obtain a written statement from the seller verifying that the seller is not a retailer and has made no more than one (1) other sale of tangible personal property within the last twelve (12) months. The seller's name and address, the date, and the seller's signature must appear on the statement. The purchaser must retain the occasional sale statement provided by the seller as evidence that the purchase of the tangible personal property is not subject to use tax. (3-15-02)

c. Sales arranged by a third party are taxable. If any sales agent, licensed or unlicensed, participates in the sale of tangible personal property, the sale is taxable. See Rule 020 of these rules. (3-15-02)

02. Change in the Form of Doing Business. A change in the form of doing business qualifies for an occasional sale exemption when the ultimate ownership of the property is substantially unchanged. Example: The incorporation of a partnership qualifies for an occasional sale exemption when substantially all of the property owned by the partnership is transferred to the corporation, and the stockholders of the corporation own substantially the same proportion of the corporation's stock as they owned in the partnership interest as partners. (7-1-93)

03. Bulk Sale - Sale of an On-Going Business. The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment of a business qualifies for the occasional sale exemption if: (7-1-98)

a. The purchaser continues the same type of business operation; and (7-1-93)

b. Prior to the sale the income and expenses attributable to the separate division, branch, or identifiable segment can be determined from the accounting records and books. (7-1-93)

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c. Example: Corporation X sells its entire wood products division to Corporation Y, which continues to operate it in substantially the same form. The transaction qualifies for an occasional sale exemption. (7-1-93)

04. Sale of a Motor Vehicle Between Family Members. Sales of motor vehicles between family members related within the second degree of consanguinity, blood relationship, qualify for the occasional sale exemption but only if the seller paid a sales or use tax when the motor vehicle was acquired. (7-1-93)

a. Example 1: A brother sells his automobile to his sister. The brother purchased the car from an Idaho dealer and paid Idaho sales tax on the original purchase. No tax applies to the sale of the vehicle to the sister. (7-1-93)

b. Example 2: A mother sells her automobile to her son for five thousand dollars (\$5,000). The mother is an Oregon resident and did not pay a sales or use tax when she purchased the automobile. The son, who is a resident of Idaho, must pay Idaho use tax on the five thousand dollar (\$5,000) purchase price of the automobile. (7-1-93)

05. Transfers Between Related Parties. ~~Effective July 1, 1990, the~~ The transfer of capital assets between related parties qualifies for an occasional sale exemption, but only if the person transferring the asset has paid a sales or use tax when the asset was acquired. Exempt transfers between related parties include: capital assets transferred in and out of businesses by owners, partners, shareholders stockholders, when the transfer is made only in exchange for equity in the business, and capital assets transferred between a parent corporation and its subsidiary, if the parent owns at least eighty percent (80%) of the subsidiary, and transfers between subsidiary corporations with a common parent, if the parent owns at least eighty percent (80%) of both, and if the transfers are made only in exchange for stock or securities. (7-1-93)()

a. Example: Two (2) individuals form a partnership. Each contributes a car in exchange for a percentage of ownership in the business. If each partner paid sales tax when he purchased his vehicle, no sales tax applies to the transfer of the vehicle into the partnership. (7-1-97)

b. Example: Three (3) individuals are equal partners in a construction business. They dissolve the partnership, and each person takes one-third (1/3) of the capital assets as his share of the equity in the business. If tax was paid on the assets when they were purchased by the partnership, sales tax does not apply to the transfer of the assets from the partnership to the co-owners. (7-1-93)

c. Example: A corporation-owned car is given to a shareholder as a bonus for special accomplishments. There is no change in the recipient's shareholdings. The shareholder must pay tax on the bonus based on the value of the car, regardless of whether the corporation paid tax when the car was purchased. The exemption does not apply because the transfer of the car did not change the shareholder's equity. (7-1-93)

06. Sales and Rentals to Related Parties. The sale of a capital asset to a related party

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qualifies for the occasional sale exemption, but only if the seller has paid sales or use tax when the asset was acquired or if the seller acquired the asset from a related party who paid sales tax on acquisition of the asset. ~~Effective January 1, 1996, r~~Rentals and leases of capital assets between related parties will also qualify for the occasional sale exemption, but only if the initial related party paid sales tax upon acquisition of the asset. If the initial purchaser does not pay sales or use tax upon the purchase of a capital asset and then leases the asset to a related party, the lessor must collect and remit sales tax on the lease payments. The lease payments must also represent a reasonable rental value for the asset. Exempt transactions between related parties include sales, rentals, and leases of capital assets other than aircraft, boats and vessels, snowmobiles, off-highway motorbikes, and recreational vehicles, as defined by Section, 63-3622HH, Idaho Code, such as the following: (7-1-97)()

a. Sales to family members, but only if all parties to the sale are related within the second degree of consanguinity, relationship by blood, or affinity, relationship by marriage, i.e., spouses, children, parents, brothers, sisters, or grandparents. Example: A father and son are the stockholders of Corporation A. This corporation sells a business asset to Proprietorship B, which is owned by the son's grandfather. This sale is exempt as long as Corporation A paid sales tax when the asset was acquired. (7-1-98)

b. Sales in which the new owners are identical to the prior owners. Example: Corporation B owns one hundred percent (100%) of Corporation A. If the initial purchaser paid tax when it acquired an asset, it may sell the asset to the other without tax. Example: John Doe owns one hundred percent (100%) of a corporation. He buys a truck and pays sales tax. He later sells the truck to his corporation. No tax applies to the sale of the truck to the corporation. Example: A and B each own fifty percent (50%) of a partnership. The partnership buys a capital asset and pays sales tax to the vendor. The partnership immediately leases the asset to Corporation C. A owns ten percent (10%) of Corporation C and B owns ninety percent (90%) of Corporation C. Since the percentages of ownership of the partnership and the corporation are not identical, the lease transaction does not qualify for the occasional sale exemption. The partnership must seek a refund of the sales tax paid on acquisition of the asset and collect and remit sales tax on the lease payments. (7-1-97)

07. Motor Vehicles. Sales of licensed motor vehicles are not considered occasional sales and are taxable, except under the provisions of Subsections 099.02 through 099.06 of this rule. If a motor vehicle transfer qualifies for an exemption under Subsections 099.02 through 099.06 of this rule, ~~written clearance must be obtained from the State Tax Commission~~ the purchaser must complete an appropriate exemption claim form prior to applying for an Idaho motor vehicle title. See Rule 107 of these rules regarding sales of licensed motor vehicles that do not qualify as occasional sales and the appropriate exemption claim form. (3-15-02)()

08. Sales of Business Assets. Also excluded from the category of occasional sales, other than as provided by Subsection 099.06 of this rule, are sales of assets or other items of tangible personal property used in an activity requiring a seller's permit. Even though the item sold is not of the type normally sold by the seller in his regular course of business, the sale is subject to the tax. Example: A construction equipment dealership sells its office computer. Even though the seller does not normally sell computers, it must collect sales tax on the sale of the computer as the computer is used in a business requiring a seller's permit. (7-1-93)

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09. Taxable Sales of Aircraft, Boats, and Recreation Related Vehicles. The occasional sale exemptions defined in Subsections 099.01 and 099.06 of this rule do not apply to the sale or purchase of the following: (7-1-97)

a. Snowmobiles, including those required to be numbered as provided by Section 67-7102, Idaho Code. (7-1-97)

b. Off-highway motorbikes and dual purpose motorcycles. A dual purpose motorcycle is designed for use off developed roadways and highways, but is also equipped to be legally operated on public roadways and highways. (7-1-93)

c. All-terrain vehicles, ATV's, but not including tractors. A tractor is a motorized vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other farm implements. (7-1-93)

d. Portable truck campers designed for temporary living quarters, but not including pickup shells or canopies that do not have a floor. (7-1-93)

e. Camping, park, travel, and fifth-wheel travel-type trailers which are designed to provide temporary living quarters. (7-1-93)

f. Motor homes. (7-1-93)

g. Buses and van-type vehicles when converted to recreational use as temporary living quarters and providing at least four (4) of the following facilities: cooking; refrigeration or icebox; self-contained toilet; heating or air conditioning; a portable water supply system including a faucet and sink; and separate one hundred ten to one hundred twenty-five (110-125) volt electrical power supply or LP gas supply. (7-1-93)

h. Aircraft, meaning any device which is designed or used for navigation of or flight in the air, except a parachute or other device designed for such navigation but used primarily as safety equipment. See Rule 037 of these rules regarding other exemption provided for aircraft. (3-15-02)

i. Boats or vessels, meaning every description of watercraft used or capable of being used as a means of transportation on water. Example: A nonretailer sells a boat and boat trailer to an Idaho resident. The sale of the boat does not qualify for the occasional sale exemption and is subject to the tax. The sale of the boat trailer may qualify for the occasional sale exemption if the sales price of the boat trailer is separately stated on the bill of sale and an occasional sale affidavit is provided by the seller. (7-1-93)

10. Exempt Sales of Aircraft, Boats, and Recreation-Related Vehicles. Sales of aircraft, boats, or recreation-related vehicles under the provisions of Subsections 099.02 or 099.03 of this rule are exempted from the tax. Transfers of aircraft, boats, or recreation-related vehicles under the provision of Subsection 099.05 of this rule are exempted from the tax. The provisions of Subsection 099.04 of this rule apply to the sale of motorized, on-highway recreation-related vehicles. (7-1-98)

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11. Exclusion From the Occasional Sale Exemption. Section 63-3622K, Idaho Code, excludes from the occasional sale exemption the use of tangible personal property used to improve real property when such property is obtained, directly or indirectly, from a person in the business of making like or similar improvements to real property. This exclusion applies only to building materials and fixtures that will be incorporated into real property. Sales of construction equipment such as loaders, backhoes, and excavators may still be included within the definition of “occasional sale” if the seller meets all the other requirements of the exemption. ()

a. Example. A contractor enters into a contract to fabricate and install a wrought iron gate. The contractor fabricates the gate but prior to installation the building owner decides to install the gate himself and purchases it from the contractor. The building owner’s purchase does not qualify for the occasional sale exemption. ()

b. Example. A contractor has a backhoe that he uses in his contracting business. He sells the backhoe to another contractor. If the seller is not a retailer, as defined by statute, the sale can still qualify as an exempt occasional sale. ()

(BREAK IN CONTINUITY OF SECTIONS)

102. LOGGING (RULE 102).

01. In General. The Sales Tax Act provides an exemption from sales and use taxes for certain tangible personal property used in logging activities. The provisions of this rule are based on the usual methods of doing business in this industry. Specific factual differences in the way a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Since some equipment may be used for more than one (1) purpose, determinations of taxability will be made based upon the primary use of the equipment. (7-1-93)

02. Real Property. The logging exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased for the purpose of becoming an improvement or fixture to real property. See Rules 010 and 067 of these rules for a definition of real property. (4-6-05)

03. Property Used in Logging Operations. The logging exemption applies to tangible personal property primarily used in a logging activity without regard to the primary business activity of the person performing the logging. For example, a contractor building a road for the Forest Service may claim the logging exemption when purchasing equipment and supplies primarily used to remove the timber from the right-of-way if the timber is resold, even though logging is not the contractor’s primary activity. (7-1-93)

04. Logging Process Begins and Ends. The logging process begins when forest trees are first handled by the logger at the site where such an operation occurs. The logging process ends when the product is placed on transportation vehicles at the loading site, ready for shipment. (7-1-93)

05. Logging Exemption. Generally, the logging exemption includes equipment and

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supplies used or consumed in the logging process and which are necessary or essential to the performance of the operation. To qualify, the logging use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be directly used in the logging process. Examples include: (7-1-93)

a. Chain saws with a unit price of more than one hundred dollars (\$100) and tree harvesters. (7-1-93)

b. Skidders, tower-skidders, skidding cables, or chokers. (7-1-93)

c. Log loaders and log jammers which are not licensed motor equipment. (7-1-93)

d. Repair parts, lubricants, hydraulic oil, and coolants which become a component part of logging equipment. (7-1-93)

e. Fuel, such as diesel, gasoline, and propane consumed by equipment while performing exempt logging activities. (7-1-93)

06. Directly Used. Directly used, as applied to logging, means the performance of any of the following functions when such functions occur between the point at which the logging operation begins and the point at which the operation ends, as defined in Subsection 102.04 of this rule: (7-1-93)

a. The performance of a function in the logging process that effects a physical change in the property being logged so as to render the property more marketable. (7-1-93)

b. The performance of a function which occurs simultaneously with and which is an integral part of and necessary to a function which effects a physical change in the property being logged rendering it more marketable. (7-1-93)

c. The performance of a function which is an integral and necessary step in a continuous series of functions which effect a physical change in the property being logged rendering it more marketable. (7-1-93)

d. The performance of a quality control function which is an integral and necessary step in maintaining specific product standards. ~~Any portion of the quality control function that is related to research and development is excluded from this exemption.~~ (7-1-93)()

07. Not Included in Logging Exemption. Generally, the logging exemption does not include the following activities and equipment: (7-1-93)

a. Road construction equipment and supplies such as tractors, road graders, rollers, water trucks, whether licensed or unlicensed, explosives, gravel, fill material, dust suppression products, culverts, and bridge material. (7-1-93)

b. Slash disposal or brush piling and clearing equipment and supplies, such as brush clearing machines, brush rakes, and tractors, except when part of the operation of a tree farm. (7-1-93)

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- c. Reforestation equipment and supplies, except when part of the operation of a tree farm. (7-1-93)
- d. Safety equipment and supplies, including hard hats and earplugs. (7-1-93)
- e. Transportation equipment and supplies including vehicles to transport logs from the loading site to the mill, whether the vehicles are licensed or unlicensed, and cable and tie-downs used to fasten logs to the vehicle. (7-1-93)
- f. Machinery, equipment, materials, repair parts, and supplies used in a manner that is incidental to logging such as: office equipment and supplies; selling and distribution equipment and supplies; janitorial equipment and supplies; maintenance equipment and supplies which do not become component parts of logging equipment, such as welders, welding gas, and shop equipment; and paint, plastic coatings, and all other similar products used to protect and maintain equipment, whether applied to logging equipment or other equipment. (7-1-93)
- ~~g. Research equipment and supplies all expenses for which the taxpayer claims the federal credit for incremental research expenses under Section 41(f) of the Internal Revenue Code. (7-1-93)~~
- h.g. Hand tools with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tools may be to the logging operation or how directly they may be used. (7-1-93)
- i.h. Recreation-related vehicles, as defined in Section 63-3622HH, Idaho Code, regardless of use, such as All Terrain Vehicles (ATV), snowmobiles, and off-highway motorbikes. (4-6-05)
- j.i. Aircraft or motor vehicles licensed or required to be licensed by the laws of this state, regardless of the use to which such motor vehicles or aircraft are put. A motor vehicle not required to be licensed is exempt under the logging exemption only if it meets the tests established elsewhere in this rule. (7-1-93)
- 08. Election to Pay Sales Tax.** The owner of a log loader, log jammer, or similar fixed load motor equipment used in logging, not normally licensed for use on public roads, may elect to license and pay sales tax on the motor equipment rather than placing it on the personal property tax rolls, if the motor equipment may be legally operated on a public road as a commercial vehicle. (4-6-05)
- a. Motor equipment licensed at the time of purchase. Sales tax applies to the total purchase price of the motor equipment. (7-1-93)
- b. Motor equipment licensed after the date of purchase. Use tax applies to the fair market value of motor equipment on which no sales or use tax has been paid and which was not licensed at the time of purchase, if acquired within the last seven (7) years. See Section 63-3633, Idaho Code. Fair market value may be determined from the personal property tax records of the county assessor. (7-1-93)

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IDAPA 35 - STATE TAX COMMISSION

35.01.03 - IDAHO PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 651 through 654.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alan Dornfest at (208) 334-7530.

DATED this 2nd day of November, 2005.

Alan Dornfest
Tax Policy Supervisor
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

The Following Notice Was Published With The Proposed Rule

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PENDING RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105A and 63-3624, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 960 – is being amended to update rule based on HB126 and make rule internally consistent and update procedures for calculation of the county weighted average forestland levy rate in response to request from industry representatives.

In August 2005, the State Tax Commission adopted this rule as a temporary rule with an effective date of January 1, 2005. The temporary rule was published in the Idaho Administrative Bulletin, Volume 05-8, August 3, 2005, pages 295 through 297. With this publication the Department is initiating proposed rulemaking.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

The Following Notice Was Published With The Temporary Rule

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2005.

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AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule. The action is authorized pursuant to Section(s) 63-105A and 63-3624, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

Rule 960 is being amend to update the rule based on HB126 and make rule internally consistent. The statutes will be retroactive on January 1, 2005, and the rule changes will need to be in place for the effective date.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section (s) 67-5226(1), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadline in amendments to governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 1st day of July, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

960. DEFINITIONS (RULE 960).

01. Present Use. Present use shall mean that the land contains trees of a marketable species which are being actively managed to produce a forest crop for eventual harvest and which may be accepted by a commercial mill. (7-1-97)

02. ~~Silvicultural Treatment~~. ~~Silvicultural treatment~~ shall include the following activities: site preparation, planting, vegetation control, precommercial thinning, commercial thinning, fertilization, mechanical or chemical pest and disease control, pruning, inventorying, cruising, or regeneration surveys, fencing established to protect seedlings, and genetic tree improvement. (7-1-97)()

03. Custodial Expenses. Custodial expenses are some of the expenses incurred in the management of forestlands. ()

a. Included Expenses. Custodial expenses include the following expenses, except as provided in Paragraph 960.03.b of this rule: ()

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i. Reforestation expenses are the cost of seeds, seedlings, and planting for the establishment of a forest to the specifications of the Idaho Forest Practices Act (Title 38, Chapter 13, Idaho Code); ()

ii. Road maintenance expenses are those costs necessary to prevent major deterioration or maintain the integrity of forest roads including culvert maintenance, public access control, and erosion prevention, but not including the cost of original construction, opening the road for silviculture, driveway maintenance, or recreation access; ()

iii. Managing public use expenses are limited to the costs of installing and maintaining gates and signage; ()

iv. Forest inventory expenses are the costs of collection and analysis of forest inventory data; ()

v. Forest management planning expenses are the costs associated with a geographic information system (GIS) or similar information database and those activities integral to the planning process; ()

vi. Facility operations and maintenance expenses are those costs of maintaining and operating facilities necessary for forestland management; ()

vii. Environmental analysis and documentation expenses are analysis and documentation costs associated with federal and state environmental requirements; ()

viii. Appeals and litigation expenses are those costs associated with litigating items associated with federal and state environmental requirements; ()

ix. Land survey expenses are those costs associated with surveying forestland; ()

x. Forest fire suppression expenses are the portion of those costs associated with the suppression of wildfires on forestlands borne by the forestland owner, that exceed the annual fire protection fee under Section 38-111, Idaho Code; ()

xi. Other management expenses are unspecified costs agreed to by the committee on forestland taxation methodologies (CFTM) and determined to be annualized custodial expenses by the forest management cost study conducted pursuant to Section 63-1705, Idaho Code. ()

b. Excluded Expenses. Custodial expenses exclude the following: ()

i. Fertilization; ()

ii. Precommercial thinning; ()

iii. Tree improvement; ()

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- iv. Genetic improvement; ()
- v. Site preparation; ()
- vi. Harvesting; ()
- vii. Road building; ()
- viii. Timber harvest layout and silvicultural layout; ()
- ix. Slash management; ()
- x. Brush control; ()
- xi. Litigation pertaining to Subparagraphs 960.03.b.i. through 960.03.b.xi., of this rule. ()

034. Forestland Management Plan. Forestland management plan shall mean a written management plan reviewed by a professional consulting forester, Idaho Department of Lands private forestry specialist, professional industry forester, or federal government forester, to include eventual harvest of the forest crop. Professional forester is defined as an individual holding at least a Bachelor of Science degree in forestry from an accredited four (4) year institution. The forestland management plan shall include as a minimum: (7-1-97)

- a. Date of the plan preparation; (7-1-97)
- b. Name, address, and phone number of the land owner, and person preparing and/or reviewing the plan; (7-1-97)
- c. The legal description of the property; (7-1-97)
- d. A map of the property of not less than 1:24,000 scale; (7-1-97)
- e. A general description of the forest stand(s) including species and age classes; (7-1-97)
- f. A general description of the potential insect, disease, and fire hazards that may be present and the management systems which shall be used to control them; (7-1-97)
- g. The forest management plans of the landowner over the next twenty (20) years. (7-1-97)

045. Bare Forestland. Bare forestland shall qualify as forestland only if, within five (5) years after harvest or initial assessment, they are planted or regenerated naturally to minimum stocking levels as specified by the Idaho Forest Practices Act. (Title 38, Chapter 13, Idaho Code). (7-1-97)

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06. County Weighted Average Forestland Levy Rate. The county *weighted* average forestland levy rate is calculated by summing *the products of* the levy rate *times the number of forested acres* for each forested tax code area in each county and dividing this sum by the *total number of forested acres in all forested* tax code areas in each county. ()

07. Weighted Average Forestland Levy Rate. The weighted average forestland levy rate is the *weighted* average forestland levy rate defined in Subsection 960.06 of this rule multiplied by the total number of designated forestland acres in each county. The sum of the product of this calculation for each county in a forest value zone is then divided by the total number of designated forestland acres in the forest value zone. ()

08. Guiding Discount Rate. The guiding discount rate shall be determined in accordance with procedures found in the User's Guide and derived from ten (10) year treasury constant maturity rates as reported by the federal reserve system, the producer price index (PPI) published by the U.S. bureau of labor statistics, and a risk premium. ()

09. Real Price Appreciation of Stumpage. A real price appreciation (RPA) of stumpage in Idaho shall be determined in accordance with procedures found in the User's Guide and will be benchmarked to the PPI for softwood logs and bolts as reported by the U.S. bureau of labor statistics, less inflation as reported in the PPI. ()

0510. Joint Ownership. Joint ownership as used in Subsections 963.01 and 966.01 of these rules includes ownership of a single parcel of forestland by two (2) or more legal entities irrespective of their proportionate ownership interests in the parcel, but shall not include the community property interests of a spouse. (3-30-01)

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IDAPA 35 - STATE TAX COMMISSION

35.01.03 - IDAHO PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0502

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Vol. 05-08, pages 298 through 303.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alan Dornfest at (208) 334-7530.

DATED this 2nd day of November, 2005.

Alan Dornfest
Tax Policy Supervisor
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

The Following Notice Was Published With The Temporary and Proposed Rule

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EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 63-105A and 63-3624, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 645 - is being amended to clarify references and definitions necessary for implementing HB215 passed by the 2005 Legislature. The statute will be retroactive on January 1, 2005, and this rule will need to be in place for the effective date.

Rules 962 and 964 – is being amended to update rule based on HB126 and make rule internally consistent. The statutes will be retroactive on January 1, 2005, and the rule changes will need to be in place for the effective date.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section (s) 67-5226(1), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadline in amendments to governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is being adopted as a temporary/proposed rule and the time constraints require having the information available retroactively.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments

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must be directed to the undersigned and must be delivered on or before August 24, 2005.

DATED this 1st day of July, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

645. LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED (RULE 645).

Section 63-604, Idaho Code. (3-15-02)

01. Definitions. The following definitions apply for the implementation of the exemption for the speculative value portion of agricultural land. (7-1-99)

a. Homesite. The “homesite” is that portion of land, contiguous with but not qualifying as land actively devoted to agriculture, and the associated site improvements used for residential and farm homesite purposes. (7-1-99)

b. Associated Site Improvements. The “associated site improvements” include developed access, grading, sanitary facilities, water systems and utilities. (7-1-99)

c. Nursery Stock. Nursery stock is defined in Section 22-2302, Idaho Code. (3-15-02)

d. Land Used to Produce Nursery Stock. “Land used to produce nursery stock” means land used by an agricultural enterprise to promote or support the promotion of nursery stock growth or propagation, not land devoted primarily to selling nursery stock or related products. This term also includes land under any container used to grow or propagate nursery stock. This term does not include land used for parking lots or for buildings sites used primarily to sell nursery stock or related items or any areas not primarily used for the nurturing, growth or propagation of nursery stock. (3-15-02)

e. Speculative Value Exemption. The “speculative value exemption” is the exemption allowed on land actively devoted to agriculture. (7-1-99)

02. Homesite Assessment. Effective January 1, 1999, each homesite and residential and other improvements, located on the homesite, shall be assessed at market value each year. (7-1-99)

a. Accepted Assessment Procedures. Market value shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. Acceptable techniques include those that are either time tested in Idaho, mathematically correlated to market sales, endorsed by assessment organizations, or widely accepted by assessors in Idaho and other states. (7-1-99)

b. Appropriate Market and Comparable Selection. The appropriate market is the

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market most similar to the homesite and improvements, located on the homesite. In applying the sales comparison approach, the appraiser should select comparables having actual or potential residential use. (7-1-99)

c. Assigning Category. The value of the homesite will be listed in Category 10. (7-1-99)

d. Homesite Independent of Remaining Land. The value and classification of the homesite will be independent of the classification and valuation of the remaining land. (7-1-99)

03. Valuing Land, Excluding the Homesite. The assessor shall value land, excluding the homesite, on the following basis: (5-3-03)

a. Land Used for Personal Use or Pleasure. Any land, regardless of size, utilized for the grazing of animals kept primarily for personal use or pleasure and not a portion of a for profit making agricultural enterprise, shall be valued at market value using appraisal procedures identified in Subsection Paragraph 645.02.a of this rule and shall not qualify for the speculative value exemption. (~~3-30-01~~)(1-1-05)T

b. Land in a Subdivision. Land in a subdivision with restrictions prohibiting agricultural use shall be valued at market value using appraisal procedures identified in Subsection Paragraph 645.02.a of this rule and shall not qualify for the speculative value exemption but may qualify for the exemption under Section 63-602FF, Idaho Code. Land meeting the use qualifications identified in Section 63-604, Idaho Code, and in a subdivision without restrictions prohibiting agricultural use shall be valued as land actively devoted to agriculture using the same procedures as used for valuing land actively devoted to agriculture and not located in a subdivision. (~~5-3-03~~)(1-1-05)T

c. Land, Five (5) Contiguous Acres or Less. Land of five (5) contiguous acres or less shall be presumed nonagricultural, shall be valued at market value using appraisal procedures identified in Subsection Paragraph 645.02.a of these rules, and shall not qualify for the speculative value exemption. If the owner produces evidence that each contiguous holding of land under the same ownership has been devoted to agricultural use for the last three (3) growing seasons and it agriculturally produced for sale or home consumption fifteen percent (15%) or more of the owner's or lessee's annual gross income or it produced gross revenue in the immediate preceding year of one thousand dollars (\$1,000) or more, the land actively devoted to agriculture, shall qualify for the speculative value exemption. For holdings of five (5) contiguous acres or less income is measured by production of crops, nursery stock, grazing, or net income from sale of livestock. Income shall be estimated from crop prices at harvest or nursery stock prices at time of sale. The use of the land and the income received in the prior year must be certified with the assessor by March 15, each year. (~~5-3-03~~)(1-1-05)T

d. Land, More Than Five (5) Contiguous Acres. Land of more than five (5) contiguous acres under one (1) ownership, producing agricultural field crops, nursery stock, or grazing, or in a cropland retirement or rotation program, as part of an agricultural for profit enterprise, shall qualify for the speculative value exemption. Land not annually meeting any of these requirements fails to qualify as land actively devoted to agriculture and shall be valued at market value using appraisal procedures identified in Subsection Paragraph 645.02.a. and shall

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~~not qualify~~ of this rule.

~~(5-3-03)~~(1-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

962. TAXATION OF ~~LARGE SIZE FOREST TRACTS~~ **FORESTLANDS UNDER THE PRODUCTIVITY OPTION (RULE 962).**

Section 63-1705, Idaho Code.

~~(5-3-03)~~(1-1-05)T

01. ~~Productivity Formula~~ Forestland Valuation Process. ~~Taxation under the provisions of Section 63-1705, Idaho Code, shall not include timber inventory in addition to the productivity value since the value of timber growing on the land is included in the productivity formula.~~ The productivity formula process used to determine the forestland value under the productivity option shall be as ~~follows:~~ specified in the User's Guide referenced in Section 63-1701, Idaho Code.

Step 1:	(MAI) Mean Annual Growth Increment Multiplied By The (SV) Stumpage Value
Step 2:	Add Other Agricultural Related Income
Step 3:	Minus Costs
Step 4:	The Sum Of Steps 1 - 3 Divided By The Capitalization Rate
Step 5:	Equals The Productivity Value
(MAI x SV + other agricultural related income - costs)/Capitalization Rate	
KEY:	
MAI = Mean Annual Growth Increment, board feet/acre/year	
SV = Stumpage Value, preceding five (5) year rolling average value of timber harvested within the forest value zone from state timber sales or the best available data for the same five (5) year period.	
Other Agricultural Related Income = Grazing income from the forestland.	
Costs = Annualized expenses directly related to producing the forest crop, including, but not limited to the establishment, maintenance, improvement, and management of the crop over the rotation period, including the forest protection fee currently charged by the Idaho Department of Lands.	
Capitalization Rate = Shall be determined in accordance with the procedures described in Section 63-1705(4), Idaho Code.	

~~(5-3-03)~~(1-1-05)T

02. Forest Valuation Zones. The state shall be divided into four (4) forest valuation zones: (7-1-99)

a. ZONE 1 - Boundary, Bonner, Kootenai counties. (7-1-97)

b. ZONE 2 - Benewah, Shoshone, Latah, Clearwater, Nez Perce, Lewis, Idaho counties. (7-1-97)

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c. ZONE 3 - Adams, Valley, Washington, Payette, Gem, Boise, Canyon, Ada, Elmore, Camas, Blaine, Gooding, Lincoln, Jerome, Minidoka counties. (7-1-97)

d. ZONE 4 - The remaining nineteen (19) counties. (7-1-97)

03. Classification of Forestlands. In all ~~F~~forest valuation zones, ~~1 and 2:~~ There shall be three (3) separate productivity classes of forestland: poor, medium, and good. These broad classes are related in the following manner by definition to the “Meyer Tables” published in “Yield of Even-Aged Stands of Ponderosa Pine” and “Haig Tables” published in “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” as both documents are referenced in Rule 006 of these rules. These classes apply to forestland which may or may not be stocked with commercial or young growth timber. ~~(5-3-03)(1-1-05)T~~

a. Poor productivity class is defined as forestland having a mean annual increment, MAI, of one hundred ~~twenty-five (10025)~~ board feet per acre per year, based on an ~~eighty seventy-three (8073)~~ year rotation ~~and sixty-five percent (65%) of normal stocking by the end of the rotation period.~~ This productivity class includes western white pine site index 35-45 and ponderosa pine site index 45-80. One hundred ~~twenty-five (10025)~~ board feet per acre MAI shall be used in the ~~productivity formula~~ valuation process. ~~(7-1-93)(1-1-05)T~~

b. Medium productivity class is defined as forestland having a mean annual increment, MAI, of two hundred twenty-five (225) board feet per acre per year, based on an ~~eighty sixty-eight (8068)~~ year rotation ~~and sixty-five percent (65%) of normal stocking by the end of the rotation period.~~ This productivity class includes western white pine site index 46-60 and ponderosa pine site index 81-110. Two hundred twenty-five (225) board feet per acre MAI shall be used in the ~~productivity formula~~ valuation process. ~~(7-1-93)(1-1-05)T~~

c. Good productivity class is defined as forestland having a mean annual increment, MAI, of three hundred fifty (350) board feet per acre per year, based on an ~~eighty sixty-three (8063)~~ year rotation ~~and sixty-five percent (65%) of normal stocking by the end of the rotation period.~~ This productivity class includes western white pine site index 61 and above and ponderosa pine site index 111 and above. Three hundred fifty (350) board feet per acre MAI shall be used in the ~~productivity formula~~ valuation process. ~~(7-1-93)(1-1-05)T~~

d. For forest valuation zones 1 and 2, forestland shall be stratified into areas of similar productive potential using the habitat typing methodology described in “Forest Habitat Types of Northern Idaho: A Second Approximation,” referenced in Rule 006 of these rules. Within these stratified areas, site index trees will be selected and measured that will identify the site index to be used to place the land in one (1) of the three (3) productivity classes listed above. (5-3-03)

e. For forest valuation zones 3 and 4, the criteria for stratification shall be generally the same as that used in zones 1 and 2 based on the habitat typing methodology described in “Forest Habitat Types of Central Idaho,” as referenced in Rule 006 of these rules, with the following adjustments made in growth rates for lower moisture levels. Poor productivity class, one hundred ~~twenty-five (10025)~~ board feet per acre MAI shall be used in the ~~productivity formula~~ valuation process. Medium productivity class, two hundred thirteen (213) board feet per acre MAI shall be used in the ~~productivity formula~~ valuation process. Good productivity class,

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three hundred twenty (320) board feet per acre MAI shall be used in the ~~productivity formula~~
valuation process. ~~(5-3-03)(1-1-05)T~~

~~04. Recommended Mean Annual Growth Increments. The recommended MAI's to be used in the productivity formulas for the appropriate forest valuation zones are according to the best available information and subject to change upon receipt of updated information. The MAI's shall be considered as midpoints of a class in the following manner:~~

MIDPOINT	
Zones 1 and 2:	
Poor	38 - 100 - 162 board feet per acre
Medium	163 - 225 - 286 board feet per acre
Good	287 - 350 and greater board feet per acre
Zones 3 and 4:	
Poor	44 - 100 - 156 board feet per acre
Medium	157 - 213 - 268 board feet per acre
Good	269 - 320 and greater board feet per acre

~~(7-1-99)~~

054. Deficient Areas. Lakes, solid rock bluffs, talus slopes, and continuously flooded swampy areas, larger than five contiguous acres in size which can be identified ~~on aerial photos~~
through remote sensing shall be valued at forty percent (40%) of the poor bare land value as defined in Section 63-1706, Idaho Code. These areas are defined as being incapable of growing trees.
~~(7-1-97)(1-1-05)T~~

(BREAK IN CONTINUITY OF SECTIONS)

964. YIELD TAX ON APPLICABLE FOREST PRODUCTS (RULE 964).

01. Calculation. The calculation described below will be used to update the bare forestland value for tax assessment purposes on an annual basis:

$$BLV_z = \left(\left[0.5 \right] \times \left[\frac{(T_z - T_n)}{T_n} \right] + 1 \right) \times (BLV_y)$$

STEP 1:	Subtract T_n from T_z
STEP 2:	Divide the Answer in Step 1 by T_n
STEP 3:	Multiply the Answer in Step 2 by 0.5
STEP 4:	Add 1 to the Answer in Step 3
STEP 5:	Multiply BLV_y by the Answer in Step 4

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KEY:	
BLVz	= Bare forestland value for next year
BLVy	= Bare forestland value for current year
Tz	= Five year average stumpage value (\$/MBF) for the period ending in the current year
Tn	= Five year average stumpage value (\$/MBF) for the period ending one year ago

(~~3-30-01~~)(1-1-05)T

02. Stumpage Value. The stumpage value shall be the same as that used in the productivity ~~formula~~ valuation process by zone. (~~3-30-01~~)(1-1-05)T

03. Bare Forestland Value. After review of the productivity valuation process by March 1 each year, the State Tax Commission shall review and adjust, as appropriate, the bare forestland values for the current year ~~shall be reviewed and adjusted by the State Tax Commission periodically.~~ (~~3-30-01~~)(1-1-05)T

04. Landowner's Report. By June 1, of each year the county treasurer shall make a written report to include the forest landowner's name, legal description of forest property owned, and yield taxes paid for the current assessment year. This report shall be submitted to the county auditor and ~~shall be kept on file~~ a record shall be maintained for ten (10) years and not disposed of until the eleventh year. (~~7-1-97~~)(1-1-05)T

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IDAPA 35 - STATE TAX COMMISSION

35.01.03 - IDAHO PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0503

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 655 through 669.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alan Dornfest at (208) 334-7530.

DATED this 2nd day of November, 2005.

Alan Dornfest
Tax Policy Supervisor
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

The Following Notice Was Published With The Proposed Rule

REVENUE & TAXATION

STATE TAX COMMISSION
Idaho Property Tax Administrative Rules

Docket No. 35-0103-0503
PENDING RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105A and 63-3624, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 006: Make annual updates to incorporations by reference material.

Rule 130: Amend rule to clarify land not meeting the definition in Idaho Code Section 63-604, is the only land to be reported by the assessor for the rural speculative homesite exemption and all land meeting criteria in Idaho Code Section 63-604 must be reported in categories 1 through 5.

Rule 131: Amend rule to update definitions and statistical measures for consistency with national standards.

Rule 315: Amend rule to assure improved equalization of manufactured homes.

Rule 509: Amend rule to require submission of exempt value resulting from Idaho Code Sections 63-602GG, 63-602HH, 63-602HH [63-602II] and 63-606A.

Rule 609: Amend rule to clarify and provide examples relating to ownership of homes on jointly owned land.

Rule 612: Add rule to clarify exempt status of personal property permanently affixed to certain property registered vehicles.

Rule 802: Amend rule to clarify new construction in annexed areas is only reported on the new construction roll and is excluded from the annexation value.

Rule 805: Modifies date for county clerks to submit notices of compliance so notice is timely and current for property tax funded budget approval process.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

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NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

006. INCORPORATION BY REFERENCE (RULE 006).

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards, or rules adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

01. Availability of Reference Material. Copies of the documents incorporated by reference into these rules are available at main office of the State Tax Commission as listed in Rule 005 of these rules. (5-3-03)

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-3-03)

a. “Standard on Ratio Studies” published in 1999 by the International Association of Assessing Officers. (5-3-03)

b. “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 2004~~5~~ for the September through December period by the National Appraisal Guides Incorporated. (~~4-6-05~~)()

c. “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 2004~~5~~ for the September through December period by the National Appraisal Guides Incorporated. (~~4-6-05~~)()

d. “Official Railway Equipment Register” published for the last three (3) quarters in 2004~~5~~ and the first quarter in 2005~~6~~ by R. E. R. Publishing Corporation, Agent as a publication of Commonwealth Business Media, Inc. (~~4-6-05~~)()

e. “Forest Habitat Types of Northern Idaho: A Second Approximation” published by

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the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (4-6-05)

f. “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)

g. “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)

h. “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)

i. “Manual of Instructions for the Survey of the Public Lands of the United States” published by the Government Printing Office for the Bureau of Land Management in 1973, Technical Bulletin No. 6. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

130. EQUALIZATION BY CATEGORY -- IDENTIFICATION AND REAPPRAISAL (RULE 130).

Sections 63-109 and 63-315, Idaho Code. Property shall be identified for assessment purposes in the categories outlined below. These categories are to be used on the current year's assessment notice, assessment roll and abstract. (3-15-02)

01. Category 1 - Irrigated Agricultural Land. Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of “land actively devoted to agriculture” under Section 63-604, Idaho Code, or the requirements for “wildlife habitat” or “conservation agreement” under Section 63-605, Idaho Code, for the current assessment year in this category. This irrigated land must be capable of and normally ~~producing~~ produce harvestable crops and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (3-30-01)(____)

02. Category 2 - Irrigated Grazing Land. Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of “land actively devoted to agriculture” under Section 63-604, Idaho Code, or the requirements for “wildlife habitat” or “conservation agreement” under Section 63-605, Idaho Code, for the current assessment year in this category.

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This irrigated land must be used for grazing and not normally capable of producing harvestable crops and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (~~3-30-01~~)()

03. Category 3 - Nonirrigated Agricultural Land. Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this category. This nonirrigated land must be capable of and normally ~~producing~~ produce harvestable crops without man-made irrigation and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (~~3-30-01~~)()

04. Category 4 - Meadow Land. Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this category. This meadow land must be capable of lush production of grass and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (~~3-30-01~~)()

05. Category 5 - Dry Grazing Land. Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) Only place land meeting the definition of "land actively devoted to agriculture" under Section 63-604, Idaho Code, or the requirements for "wildlife habitat" or "conservation agreement" under Section 63-605, Idaho Code, for the current assessment year in this category. This land must be capable of supporting grasses and not normally capable of supporting crops on regular rotation and may be located inside or outside the boundaries of a subdivision without restrictions on such use or the boundaries of an incorporated city. (~~3-30-01~~)()

06. Category 6 - Productivity Forestland. All land and only such land designated by the owner for assessment appraisal and taxation under Section 63-1703(a), Idaho Code, for the current year's assessment roll. This land must be assessed as forestland under the productivity option and may be located inside or outside the boundaries of an incorporated city. Also included is all land assessed under Section 63-1704, Idaho Code. (~~3-30-01~~)()

07. Category 7 - Bare Forestland. All land and only such land designated by the owner for assessment appraisal and taxation under Section 63-1703(b), Idaho Code, for the current year's assessment roll. This land must be assessed as bare land with the yield tax option and may be located inside or outside the boundaries of an incorporated city. (3-30-01)

08. Category 8 - Speculative Homesite. In each county with a population of less than one hundred thousand (100,000), rural subdivision plat lots granted the exemption under Section 63-602FF, Idaho Code, for the current year's assessment roll. Never place any land, even when within a platted subdivision, currently meeting the definition of "land actively devoted to

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agriculture” under Section 63-604, Idaho Code, in this category; such land must always be in the appropriate category(ies) 1 through 5. ~~(5-3-03)~~()

09. Category 9 - Patented Mineral Land. All land used solely for mines and mining claims and only the part of such land not used for other than mining purposes for the current year's assessment roll. This land may be located inside or outside the boundaries of an incorporated city. See Section 63-2801, Idaho Code. (3-30-01)

10. Category 10 - Homesite Land. Land being utilized for homesites on categories 1 through 9. (3-23-94)

11. Category 11 - Recreational Land. Land used in conjunction with recreation but not individual homesites. (3-23-94)

12. Category 12 - Rural Residential Tracts. Rural residential land not in a properly recorded subdivision. (3-23-94)

13. Category 13 - Rural Commercial Tracts. Rural commercial land not in a properly recorded subdivision. (3-23-94)

14. Category 14 - Rural Industrial Tracts. Rural industrial land not in a properly recorded subdivision. (3-23-94)

15. Category 15 - Rural Residential Subdivisions. Rural residential land in a properly recorded subdivision. (3-23-94)

16. Category 16 - Rural Commercial Subdivisions. Rural commercial land in a properly recorded subdivision. (3-23-94)

17. Category 17 - Rural Industrial Subdivisions. Rural industrial land in a properly recorded subdivision. (3-23-94)

18. Category 18 - Other Land. Land not compatible with other categories. (4-5-95)

19. Category 19 - Waste. Public rights-of-way includes roads, ditches, and canals. Use this category to account for total acres of land ownership. Only list acres in this category on the abstract. (3-15-02)

20. Category 20 - Residential Lots or Acreages. Land inside city limits zoned residential. (3-30-01)

21. Category 21 - Commercial Lots or Acreages. Land inside city limits zoned commercial. (3-30-01)

22. Category 22 - Industrial Lots or Acreages. Land inside city limits zoned industrial. (3-30-01)

23. Category 25 - Common Areas. Land and improvements not included in

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individual property assessments. (4-5-95)

24. Category 26 - Residential Condominiums. Land and improvements included in individual assessments of condominiums in areas zoned residential or in areas zoned commercial or industrial but maintained as residences. (7-1-97)

25. Category 27 - Commercial or Industrial Condominiums. Land and improvements included in individual assessments of condominiums in areas zoned commercial or industrial. (3-23-94)

26. Category 30 - Improvements. Other than residential, located on category 20. (3-23-94)

27. Category 31 - Improvements. Residential improvements located on category 10. (3-30-01)

28. Category 32 - Improvements. Other than residential, located on categories 1 through 12 and 15. (3-23-94)

29. Category 33 - Improvements. Located on category 11. (3-23-94)

30. Category 34 - Improvements. Residential in nature, located on category 12. (3-23-94)

31. Category 35 - Improvements. Commercial in nature, located on category 13. (3-23-94)

32. Category 36 - Improvements. Industrial in nature, located on category 14. (3-23-94)

33. Category 37 - Improvements. Residential in nature, located on category 15. (3-23-94)

34. Category 38 - Improvements. Commercial in nature, located on category 16. (3-23-94)

35. Category 39 - Improvements. Industrial in nature, located on category 17. (3-23-94)

36. Category 40 - Improvements. Located on category 18. (3-23-94)

37. Category 41 - Improvements. Residential in nature, located on category 20. (3-23-94)

38. Category 42 - Improvements. Commercial in nature, located on category 21. (3-23-94)

39. Category 43 - Improvements. Industrial in nature, located on category 22.

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(3-23-94)

40. Category 44 - Improvements. Taxable improvements located on otherwise exempt property under the same ownership. (3-23-94)

41. Category 45 - Utility Systems. Locally assessed utility systems not under the jurisdiction of the State Tax Commission. (3-30-01)

42. Category 46 - Manufactured Housing. Structures transportable in one (1) or more sections, built on a permanent chassis, for use with or without permanent foundation located on land under the same ownership as the manufactured home but assessed separate from the land. Include any manufactured home located on land under the same ownership as the manufactured home on which a statement of intent to declare a real property has been filed but becomes effective the following year. (5-3-03)

43. Category 47 - Improvements to Manufactured Housing. Additions not typically moved with manufactured housing. (3-23-94)

44. Category 48 - Manufactured Housing. Manufactured housing permanently affixed to land under the same ownership as the manufactured home and on which a statement of intent to declare as real property has been filed and has become effective. (5-3-03)

45. Category 49 - Manufactured Housing. Manufactured housing permanently affixed to leased land and on which a statement of intent to declare as real property has been filed and has become effective. (5-3-03)

46. Category 55 - Boats or Aircraft. Unlicensed watercraft or unregistered aircraft. (3-23-94)

47. Category 56 - Construction Machinery, Tools, and Equipment. Unlicensed equipment such as cranes, tractors, scrapers, and rock crushers, used in the building trade or road construction. (3-23-94)

48. Category 57 - Equities in State Property. Property purchased from the state under contract. (4-5-95)

49. Category 59 - Furniture, Fixtures, Libraries, Art, and Coin Collections. Trade articles used commercially for convenience, decoration, service, storage, including store counters, display racks, typewriters, office machines, surgical and scientific instruments, paintings, books, coin collections, and all such items held for rent or lease. (3-23-94)

50. Category 60 - Improvements on Railroad Rights-of-Way. Improvements located on railroad rights-of-way under separate ownership. (3-23-94)

51. Category 61 - Improvements by Lessee Other Than Category 62. Improvements made by the tenant or lessee to landlord's property. (3-23-94)

52. Category 62 - Improvements on Exempt or Public Land. Taxable

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improvements which are owned separately from exempt or public land on which they are located.
(3-23-94)

53. Category 63 - Logging Machinery, Tools, and Equipment. Unlicensed logging machinery, shop tools, and equipment not assessed as real property. (3-23-94)

54. Category 64 - Mining Machinery, Tools, and Equipment. Unlicensed mining machinery, shop tools, and equipment not assessed as real property. (3-23-94)

55. Category 65 - Manufactured Housing. Manufactured housing not considered real property located on exempt, rented or leased land. Include any manufactured home located on exempt, rented or leased land on which a statement of intent to declare as real property has been filed but becomes effective the following year. (3-15-02)

56. Category 66 - Net Profits of Mines. That amount of money or its equivalent received from the sale or trade of minerals or metals extracted from the Earth after deduction of allowable expenses. See Section 63-2802, Idaho Code, and Rule 982 of these rules. (3-30-01)

57. Category 67 - Operating Property. Property assessed by the State Tax Commission. (3-30-01)

58. Category 68 - Other Miscellaneous Machinery, Tools, and Equipment. Unlicensed machinery, tools, and equipment not used in construction, logging, mining, or not used exclusively in agriculture. (3-15-02)

59. Category 69 - Recreational Vehicles. Unlicensed recreational vehicles. (3-23-94)

60. Category 70 - Reservations and Easements. Reservations, including mineral rights reserved divide ownership of property rights. Easements convey use but not ownership. (3-23-94)

61. Category 71 - Signs and Signboards. Signs and signboards, their bases and supports. (3-23-94)

62. Category 72 - Tanks, Cylinders, Vessels. Containers. (3-23-94)

63. Category 81 - Exempt Property. For county use in keeping an inventory, including acreage, of exempt real and personal property. (3-23-94)

(BREAK IN CONTINUITY OF SECTIONS)

131. USE OF RATIO STUDY IN EQUALIZATION (RULE 131).
Section 63-109, Idaho Code.

(5-3-03)

01. ~~Annual~~ Equalization Ratio Study. Each year the State Tax Commission shall

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conduct a ratio study to assist in the equalization of assessments of property within and among the categories of property established in Rule 130 of these rules. The ratio study shall be conducted in accordance with the "Standard on Ratio Studies" ~~published in 1999 by the International Association of Assessing Officers~~ referenced in Rule 006 of these rules. The annual ratio study shall test assessments as of January 1 of each year. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within each county between October 1 of the year preceding the year for which assessments are to be tested and September 30 of the year for which assessments are to be tested. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which assessments are to be tested, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. The State Tax Commission may delete sales when necessary to improve representativeness. The study shall be completed in February following the end of the period studied. The appropriate ratio study statistical measure of level shall be ~~determined as follows:~~ the median for equalization ratio studies conducted beginning October 1, 2006. ~~(3-30-01)()~~

~~a. Given a sample of ten (10) or fewer observations, the mean shall be used.~~

~~(3-30-01)~~

~~b. Given a sample of eleven (11) or more observations, the median shall be used.~~

~~(3-30-01)~~

02. Tested For Equalization. Categories which will be tested for equalization purposes will include the following, provided that adequate samples can be obtained: (4-5-95)

a. Improved Urban Residential: Abstract Items 20 and 41; (4-5-95)

b. Unimproved Urban Residential: Abstract Item 20; (4-5-95)

c. Improved Rural Residential: Subcategory 1 (tracts): Abstract Items 12, 18, 34, and 40; Subcategory 2 (subdivisions): Abstract Items 15 and 37; (4-5-95)

d. Unimproved Rural Residential: Subcategory 1 (tracts): Abstract Items 12 and 18; Subcategory 2 (subdivisions): Abstract Item 15; (4-5-95)

e. Commercial: Abstract Items 13, 16, 21, 27, 33, 35, 38, and 42. (Urban and rural categories and land and improved categories will be analyzed separately, if adequate samples are available.) (3-30-01)

f. Residential Condominiums: Abstract Item 26. (3-30-01)

g. Manufactured Housing Without Land: Abstract Items 46, 47, 49, and 65. (5-3-03)

h. Manufactured Housing With Land: Abstract items 46, 47, and 48 with residential land ~~for ratio studies conducted beginning January 1, 2002.~~ ~~(3-15-02)()~~

03. Separate and Combined Analyzations. (3-30-01)

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a. Categories 18 and 40 may be analyzed separately from Categories 12 and 34 if adequate samples are available. If these categories (18 and 40) are not used for residential property, they should not be included in the 12/34 study. (3-30-01)

b. Manufactured housing sales that include land may be analyzed as an independent category or in combination with other improved residential property sales with the same land category. The manufactured housing sales with land will be analyzed as an independent category unless the State Tax Commission and county assessor agree that analysis in combination with other improved residential property sales with the same land category would produce a more representative sample. (3-15-02)

c. Samples for the categories listed in Subsection 131.02 of this rule may be analyzed in combinations designed to produce studies of improved residential property, unimproved residential property, commercial property, and manufactured housing. Such analysis will be conducted upon request by the county assessor, provided that the assessor provides evidence to the State Tax Commission that the resulting combined category studies will provide results that are more representative of the categories to be equalized. (~~3-30-01~~)()

04. Follow-Up Ratio Study. When the annual ratio study provided in Subsections 131.01 and 131.02 of this rule, discloses that assessments in any category of property as defined in Subsections 131.02 and 131.03 of this rule in a county are out of compliance with the equalization standards of this rule, the State Tax Commission shall conduct a follow-up ratio study. The follow-up ratio study shall test the assessments for January 1 of the year following the year tested by the annual ratio study and shall be based on property sales occurring during the calendar year immediately preceding that date. The State Tax Commission shall notify the county assessor of the results of the follow-up ratio study. The notice shall indicate whether any adjustments will be considered by the State Tax Commission at its next equalization meeting in August based on either the annual or any follow-up ratio study and the reason for the proposed adjustments. (~~3-30-01~~)()

05. Use of Ratio Study Results. The results of the annual ratio study or any follow-up ratio study shall be one (1) source of information upon which the State Tax Commission may rely when equalizing assessments of property by category under Section 63-109, Idaho Code. When the results of any ratio study on any property category as defined in Subsections 131.02 and 131.03 of this rule show, with reasonable statistical certainty as defined in Subsection 131.08 of this rule, that the appropriate measure of level of any category studied is less than ninety percent (90%) or greater than one hundred ten percent (110%), the assessment of property within that category may be considered not equalized. When this occurs, the State Tax Commission may, at its annual meeting commencing on the second Monday in August, order the county auditor to adjust the value of all property in any category or subcategory included in the analysis conducted in an amount the State Tax Commission finds necessary to accomplish equalization of assessments of property. The State Tax Commission may order the county auditor to adjust the value of manufactured homes with land as if the combination were a category. If categories have been combined for analysis, adjustment will not be considered for any category that does not have at least one (1) observation in the ratio study conducted for the combined categories. (~~3-15-02~~)()

06. Use of Alternate Ratio Study. When the follow-up ratio study required by

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Subsection 131.04 of this rule does not measure the true assessment level, the State Tax Commission may consider adjustment based on the most recent annually conducted ratio study or other information relevant to equalization. If the State Tax Commission has reason to question the representativeness of the sample used in an annual or follow-up ratio study conducted on any category of property, the State Tax Commission may delay implementation of any order to adjust property values until two (2) successive years' ratio studies fail to produce an appropriate measure of level between ninety percent (90%) and one hundred ten percent (110%).

(3-30-01)(____)

07. Submission of Additional Information. Any party may petition the State Tax Commission to consider any information or studies relevant to equalization. The petition shall include a description of the information to be presented and the petitioner's conclusions drawn from the information.

(4-5-95)

08. Reasonable Statistical Certainty. For the purposes of this section and equalization pursuant to Section 63-109, Idaho Code, "reasonable statistical certainty" that any category is not equalized shall mean that the appropriate measure of level determined by the ratio study for the category must be provably less than ninety percent (90%) or greater than one hundred ten percent (110%) of market value for assessment purposes. ~~Beginning with the ratio study used to test 2000 assessments, s~~Such a determination shall occur if:

(3-30-01)(____)

a. The appropriate measure of level for the category(ies) being tested is less than ninety percent (90%) or greater than one hundred ten percent (110%) and a ninety percent (90%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%); or

(3-30-01)

b. The appropriate measure of level for the category(ies) being tested has been less than ninety percent (90%) or greater than one hundred ten percent (110%) as determined by the most recent previous two (2) ratio studies on the category(ies) and an eighty percent (80%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%).

(3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

315. RATIO STUDIES - SCHOOL DISTRICTS (RULE 315).

Section 63-315, Idaho Code.

(5-3-03)

01. Procedures for School District Ratio Studies. The ratio study conducted by the State Tax Commission to comply with the requirements of Section 63-315, Idaho Code, shall be conducted in accordance with the "Standard on Ratio Studies" ~~published in 1999 by the International Association of Assessing Officers~~ referenced in Rule 006 of these rules. The following specific procedures will be used.

(3-30-01)(____)

a. Information on property sales, which meet the requirements of arm's length and market value sales, will be obtained and assembled into samples representing various categories

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of property and designations defined in Subsection 315.02 of this rule in each school district. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within each school district between October 1 of the year preceding the year for which adjusted market value is to be computed and September 30 of the year for which adjusted market value is to be computed. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which adjusted market value is to be computed, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. The State Tax Commission may delete sales when necessary to improve representativeness. ~~(3-30-01)~~(____)

b. A ratio will be determined for each sale by dividing the market value for assessment purposes of the property by the adjusted sale price or appraised value. (7-1-98)

c. A statistical analysis is to be conducted for the sales and any appraisals in each property designation defined in Subsection 315.02 of this rule in each school district and appropriate measures of central tendency, uniformity, reliability, and normality computed. ~~(3-30-01)~~(____)

d. With the exception of any property designations with extended time frames or added appraisals, if fewer than five (5) sales and appraisals are available, no adjustment to the taxable value of the designation will be made. (7-1-98)

e. If there are five (5) or more sales and appraisals and it is determined with reasonable statistical certainty that the property designation is not already at market value for assessment purposes, an adjusted market value will be computed for the school district by dividing the taxable value for the year for which adjusted market value is to be determined by the appropriate ratio derived from the ratio study. The appropriate ratio to be used shall be the weighted mean ratio calculated from the sample for each designation, unless it can be clearly demonstrated that this statistic has been distorted by nonrepresentative ratios. In this case the median may be substituted: (3-30-01)

f. Within each school district, adjusted market value or taxable value for each category of real, personal and operating property will be summed to produce the total adjusted market value for the school district. The school district taxable value will then be divided by this adjusted market value to produce the overall ratio of assessment in each school district. Statewide totals are to be calculated by compiling county totals. (7-1-98)

g. Urban renewal increment values will not be included in the taxable value or the adjusted market value for any school district. (7-1-98)

h. "Reasonable statistical certainty," that the property designation in question is not at market value for assessment purposes, is required. Such certainty is tested using ninety percent (90%) confidence intervals about the weighted mean or median ratios. If the appropriate confidence interval includes ninety-five percent (95%) or one hundred five percent (105%), there is not "reasonable statistical certainty" that the property designation is not at market value for assessment purposes. (3-30-01)

i. Categories of property subject to adjustment following the procedure outlined in

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this rule and ratio study designations from which measures of central tendency used for adjustments will be derived are:

Category	Property Category	Ratio Study Designation
41	Urban Residential Improvements	Residential
20	Urban Residential Land	Residential
37	Rural Residential Subdivision Improvements	Residential
15	Rural Residential Subdivision Land	Residential
34 & 40	Rural Residential Tract and Other Rural Improvements	Residential
12 & 18	Rural Residential Tracts and Other Lands	Residential
42	Urban Commercial Improvements	Commercial
21	Urban Commercial Land	Commercial
35 & 38	Rural Commercial Tract and Subdivision Improvements	Commercial
13 & 16	Rural Commercial Tracts and Subdivision Land	Commercial
46, 47, 49 , & 65	Manufactured Homes and Attachments	Manufactured Homes and Attachments Residential
48 & 49	Manufactured Homes Declared to be Real Property	Residential
26	Residential Condominiums	Residential
27	Commercial Condominiums	Commercial

(5-3-03)(____)

~~j. Except for manufactured homes identified as category 48, sales of manufactured homes including land shall not be used in the ratio study done to calculate school district adjusted market value.~~
(5-3-03)

~~k.~~ For all other property categories not contained in the list in Subsection 315.01.i. of this rule, adjusted market value will equal taxable value.
(3-30-01)(____)

~~k.~~ “Appraisal” or “appraised value” refers to any State Tax Commission provided independently conducted property appraisal.
(7-1-98)

02. Use of Property Designations. In computing the ratio for each school district, the State Tax Commission will designate property as residential, commercial, or manufactured housing and shall assign appropriate property categories defined in Rule 130 of these rules to these designations. For each school district, adjusted market value shall be computed by dividing the appropriate ratio ascertained for each of these designations into the sum of the taxable values for each category of property assigned to a designation. For the taxable value in any category to be included in said sum, at least one (1) observation (sale or appraisal) from that category must be present in the ratio study. If the ratio for any given designation in a school district indicates that the market value for assessment purposes cannot be determined with reasonable statistical

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certainty to differ from statutorily required market value, the taxable value shown on the school district abstract(s) required pursuant to Subsection 315.04 of this rule for each of the categories included in that designation shall be the adjusted market value for said designation for said school district. ~~(3-30-01)~~(____)

03. Assessor to Identify School Districts. Each county assessor will provide to the State Tax Commission the school district in which each sale submitted for the ratio study is located. (7-1-98)

04. Abstracts of Value by School District. Each county auditor shall provide to the State Tax Commission abstracts of the taxable value of all property within the portion of each school district in each county. These abstracts shall be submitted in the same manner and at the same time as provided for county abstracts of value. (7-1-98)

05. Urban Renewal Increment and Exemption to be Subtracted. The taxable value of each category of property within each school district shall not include the value that exceeds the value on the base assessment roll in any urban renewal district pursuant to Chapter 29, Title 50, Idaho Code, and shall not include the value of any exemption pursuant to Sections ~~63-602P, 63-602AA, 63-602K, 63-602G, 63-602X, 63-602CC, 63-602BB~~ 63-602G, 63-602K, 63-602P, 63-602X, 63-602AA, 63-602BB, 63-602CC, and 63-602FF, Idaho Code. ~~(5-3-03)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

509. IDENTIFICATION OF URBAN RENEWAL INCREMENT AND PARTIAL EXEMPTION VALUES ON COUNTY AND SCHOOL DISTRICT ABSTRACTS OF VALUE (RULE 509).

Section 63-509, Idaho Code. (5-3-03)

01. County and School District Abstracts to Balance. The taxable value of property in each category as shown on the abstracts prepared and submitted under Section 63-509, Idaho Code, shall equal the sum of the taxable value of property in each category as shown on the school district abstracts, required under Rule 315 of these rules, for the portion of each school district located within each given county. (3-20-04)

02. Identification of Increment. The value that exceeds the value on the base assessment roll in any urban renewal district, under Chapter 29, Title 50, Idaho Code, and Rule 804 of these rules is identified as the “increment”. (3-20-04)

03. Increment and Exemption Values to be Indicated. In addition to the value of exemptions required under Section 63-509, Idaho Code, any increment value and the value of any exemption provided under Sections ~~63-602X, 63-602BB~~, 63-602FF, 63-602GG, 63-602HH, [63-602II] 63-602HH (as enacted under House Bill 253 in 2005), 63-606A, and 63-3029B, Idaho Code, shall be indicated and subtracted from the taxable value shown for each category of property on each county and school district abstract. ~~(3-20-04)~~(____)

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(BREAK IN CONTINUITY OF SECTIONS)

609. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS (RULE 609).

Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code. (4-6-05)

01. Homeowner's Exemption. This exemption shall also be known as the homeowner's exemption. (3-15-02)

02. Partial Ownership. Any partial ownership shall be considered ownership for determining qualification for the homeowner's exemption; however, the amount of the exemption shall be decided on the reduced proportion of the value commensurate with the proportion of partial ownership. The proportional reduction shall not apply to the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than five percent (5%) ownership interest in the entity unless any ownership interest is shared by any entity other than the limited partnership, limited liability company or corporation. For tenants in common with two (2) improvements located on one (1) parcel of land, determine the applicable value for the homeowner's exemption using the procedure shown in Example 1 of Paragraph 609.02.a., of this rule unless the owner provides documented evidence of ownership interest in the improvement. To calculate property tax reduction benefits when partial ownership exists, see Paragraph 700.05.b., of these rules. (4-6-05)()

a. Example 1. John Smith and Bob Anderson own a property as tenants in common with two (2) residential improvements located on the property. Each residential improvement is owner occupied by one (1) of the tenants in common. The homeowner's exemption is calculated as follows:

Description	Value	Notes
<u>Land</u>	<u>\$42,000</u>	
<u>Residential Improvement</u>	<u>\$82,000</u>	<u>Occupied by Mr. Smith</u>
<u>Prorated Ownership Interest</u>	<u>\$41,000</u>	<u>Mr. Smith's interest</u>
<u>Homeowner's Exemption</u>	<u>\$20,500</u>	<u>For Mr. Smith as owner occupant</u>
<u>Residential Improvement</u>	<u>\$67,000</u>	<u>Occupied by Mr. Anderson</u>
<u>Prorated Ownership Interest</u>	<u>\$33,500</u>	<u>Mr. Anderson's interest</u>
<u>Homeowner's Exemption</u>	<u>\$16,750</u>	<u>For Mr. Anderson as owner occupant</u>

()

b. Example 2. John Smith and Bob Anderson own a parcel of land as tenants in common with two (2) residential improvements located on the parcel. Mr. Smith has documented evidence of one hundred percent (100%) interest in one (1) residential improvement and Mr.

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Anderson has documented evidence of one hundred percent (100%) interest in the remaining residential improvement. Each residential improvement is owner occupied. The homeowner's exemption is calculated as follows:

<u>Item Description</u>	<u>Value</u>	<u>Notes</u>
<u>Land</u>	<u>\$42,000</u>	
<u>Residential Improvement</u>	<u>\$82,000</u>	<u>Owned and occupied by Mr. Smith</u>
<u>Homeowner's Exemption</u>	<u>\$41,000</u>	<u>For Mr. Smith as occupant and sole owner</u>
<u>Residential Improvement</u>	<u>\$67,000</u>	<u>Owned and occupied by Mr. Anderson</u>
<u>Homeowner's Exemption</u>	<u>\$33,500</u>	<u>For Mr. Anderson as occupant and sole owner</u>

()

03. Determination of Residency. The State Tax Commission may release pertinent information from any Idaho income tax return to the county assessor and the county Board of Equalization for the sole purpose of providing one (1) indicator of eligibility for the homeowner's exemption. According to Section 63-3077(4), Idaho Code, this information is confidential and is not subject to public disclosure. ~~(3-20-04)~~()

(BREAK IN CONTINUITY OF SECTIONS)

612. ~~(RESERVED)~~ PROPERTY EXEMPT FROM TAXATION -- MOTOR VEHICLES AND VESSELS PROPERLY REGISTERED (RULE 612).

Sections 49-123, 49-401, 49-402A, 49-422, 49-432, and 63-602J, Idaho Code. ()

01. Motor Vehicle Defined. Motor vehicle means any vehicle as defined in Section 49-123(g), Idaho Code, and any personal property permanently affixed to that vehicle. ()

02. Exempt Motor Vehicles. Except as provided in Subsection 612.03 of this rule, any motor vehicle, as defined in Subsection 612.01 of this rule, registered for any part of the previous year under Chapter 4, Title 49, Idaho Code, is exempt from property taxation under Sections 49-401 and 63-602J, Idaho Code. ()

03. Taxable Vehicles. The following registered or permitted vehicles are taxable and not eligible for the exemption under Sections 49-401 and 63-602J, Idaho Code. ()

a. Any vehicle issued a permit in lieu of registration under Section 49-432, Idaho Code. ()

b. Any manufactured home registered under Section 49-422, Idaho Code. ()

04. Exempt Permanently Affixed Personal Property. Except as provided in Subsection 612.05 of this rule, any personal property permanently affixed to any motor vehicle registered as described in Subsection 612.02 of this rule is part of that vehicle. Hence, that

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permanently affixed personal property is exempt from property taxation under Section 63-602J, Idaho Code. ()

05. Taxable Personal Property. The following personal property, not otherwise exempt under Chapter 6, Title 63, Idaho Code, is taxable and not eligible for the exemption under Section 63-602J, Idaho Code. ()

a. Any personal property on, but not permanently affixed to, any motor vehicle registered as described in Subsection 612.02 of this rule. ()

b. Any personal property on or affixed, permanently or otherwise, to any vehicle issued a permit in lieu of registration under Section 49-432, Idaho Code. ()

c. Any personal property on or affixed, permanently or otherwise, to any utility trailer registered under Section 49-402A, Idaho Code. ()

(BREAK IN CONTINUITY OF SECTIONS)

802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).

Sections 63-802, 63-301A, and 63-602FF, Idaho Code. (3-20-04)

01. Definitions. (4-5-00)

a. “Change of Land Use Classification.” “Change of land use classification” shall mean any change in land use resulting in a category change and in an increase in taxable land value to be reflected on the current ~~assessment~~ property roll. This increase in value due to change of land use classification shall be reported on the new construction roll in the year in which the new category appears on the current property roll unless the increase in value was previously included on the new construction roll. ~~Beginning with the assessment roll prepared to reflect value as of January 1, 1997, the~~ The increase in taxable land value due to change of land use classification shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. ~~(5-3-03)~~()

b. “Nonresidential Structure.” “Nonresidential structure” shall mean any structure listed by the assessor in any category not described as residential, manufactured homes, or improvements to manufactured homes pursuant to Rule 130 of these rules. (5-3-03)

02. New Construction Roll Listing. “Listing” shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, including qualifying new construction within any revenue allocation area within any urban renewal district encompassed by the taxing district or unit. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. (7-1-99)

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03. Manufactured Housing. “Installation” of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county. (7-1-97)

04. Partial New Construction Values. The net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Any increase in a nonresidential parcel’s taxable value, due to new construction, shall be computed by subtracting the previous year’s or years’ partial taxable value(s) from the current taxable value. *In the case of partially completed property previously reported on the property roll, but subsequently exempt pursuant to Section 63-602W, Idaho Code, the increase in value to be reported on the new construction roll following loss of this exemption shall be the difference between previously reported new construction roll value and the taxable value for the year in which the occupied property is first entered on the property roll.* If any of this difference is attributable to inflation, such value shall not be included on the new construction roll. (7-1-99)()

Example: Assume a partially completed, ~~never occupied~~ nonresidential improvement was assessed at ten thousand dollars (\$10,000) as of January 1, ~~1997~~ 2004. The improvement was occupied February 2, ~~1998~~ 2004. Assume the ten thousand dollars (\$10,000) value was on the ~~1997~~ 2004 new construction roll. Assume that in ~~1999~~ 2005 the improvement is assessed at ninety thousand dollars (\$90,000) ~~and a forty five thousand dollars (\$45,000) homeowner’s exemption is then deducted.~~ Assume there has been no inflation. The amount value that can be reported on the ~~1999~~ 2005 new construction roll is calculated as follows:

1999 2005 Value (before homeowner’s exemption)	\$90,000
1999 Homeowner’s Exemption	<\$45,000>
1999 Taxable Value (after homeowner’s exemption)	\$45,000
1997 2004 Value Already Reported on New Construction Roll	<\$10,000>
1999 2005 New Construction Roll Value (this improvement)	\$35 80,000

(7-1-99)()

05. Change in Exemption Status. (5-3-03)

a. A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W, Idaho Code. (7-1-99)

b. For any rural subdivision parcels of land changing use as a result of removal of the exemption under Section 63-602FF, Idaho Code, the increase in value resulting from the removal of this exemption shall not be listed on the new construction roll when the increase in value was already listed on any previous year’s new construction roll. (5-3-03)

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06. Value of Annexation to Exclude New Construction. When determining the maximum property tax funded budget that may be certified under Section 63-802, Idaho Code, the annexation value shall include all taxable value within the annexed area except the value of new construction. The value of new construction within the annexed area shall be excluded from the value of the annexed area but included on the new construction roll for the taxing district annexing the area where the property is located, thereby preventing double counting of new construction value within the annexed area. ()

067. Notification of New Construction Roll and Annexation Values. On or before the fourth Monday in July, each county auditor must report the net taxable values on the new construction roll and within annexed areas for each appropriate taxing district or unit to that taxing district or unit. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

805. PENALTY FOR FAILURE TO PROVIDE NOTICE OF BUDGET HEARING (RULE 805).

Section 63-802A, Idaho Code. (3-15-02)

01. Penalties for Noncompliance. Effective January 1, 2003, penalties shall be applied to any taxing district that fails to provide each appropriate county clerk with written notification of the budget hearing information required pursuant to Section 63-802A, Idaho Code. The penalties provided by this section apply only to failure to comply with the April 30 notification deadline. (3-15-02)

a. Noncomplying Nonschool Districts. There shall be no increase in the portion of the budget subject to the limitations of Section 63-802, Idaho Code. This restriction shall apply to otherwise available budget increases from the three percent (3%) growth factor, new construction or change of land use classification, and annexation. There shall also be no increase resulting from adding previously accrued foregone increase amounts to the budget and the total accrued foregone amount shall not change for a noncomplying district. (3-15-02)

b. Noncomplying School Districts. The maintenance and operation portion of the budget is the portion that shall not increase. School tort and tuition funds shall be permitted to increase, subject to the limitations of Section 63-802, Idaho Code. (3-15-02)

02. Exceptions. Voter approved budget increases permitted pursuant to Section 63-802(4), Idaho Code, shall be allowed. (3-15-02)

03. County Clerks to Submit Lists. By the ~~first~~ fourth Monday of ~~August~~ May, each county clerk shall submit to the State Tax Commission a list of noncomplying taxing districts along with other documents required pursuant to Rule 803 of these rules and Section 63-808, Idaho Code. (~~3-15-02~~)()

REVENUE & TAXATION

IDAPA 35 - STATE TAX COMMISSION

35.01.10 - IDAHO CIGARETTE AND TOBACCO PRODUCTS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0110-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 686 through 688.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact James Husted at (208) 334-7530.

DATED this 2nd day of November, 2005.

James Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

The Following Notice Was Published With The Proposed Rule

REVENUE & TAXATION

STATE TAX COMMISSION**Docket No. 35-0110-0501****Idaho Cigarette and Tobacco Products Tax Administrative Rules PENDING RULE**

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 011: To strike the current wording of the rule and replace it with a statement that distribution of free tobacco products is unlawful and include a cross-reference to the statute.

Rule 018: To amend Rule 015 to state that tax must be reported on the return for the month in which the stamps are affixed.

Rule 021: To amend Rule 021 to state that the first distributor is liable for the tax and must indicate the tax was paid on the invoice. The second distributor will then not be liable for the tax.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jim Husted, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

REVENUE & TAXATION

STATE TAX COMMISSION

Docket No. 35-0110-0501

Idaho Cigarette and Tobacco Products Tax Administrative Rules **PENDING RULE**

011. DISTRIBUTION OF FREE ~~CIGARETTES~~ OR BELOW COST TOBACCO PRODUCTS (RULE 011).

01. ~~Reporting.~~ ~~When a manufacturer distributes cigarettes within this state, without charge, for sampling, or any other purpose, the manufacturer must make a report to the State Tax Commission not later than twenty (20) days after the calendar month in which the distribution occurs. The report shall include: name of manufacturer, number of cigarettes distributed, method of distribution, name and address of each wholesaler or retailer involved in such distribution, the number of cigarettes distributed through each, and the method of packaging.~~ **Distribution of Free or Below Cost Tobacco Products.** The distribution of tobacco products for free or below the cost of such products to the sellers or distributors of the products is prohibited by Section 39-5707, Idaho Code. If a free package is given away in a sales promotion that requires the purchaser to buy a specified number of packages, such as buy two (2) get one (1) free, all the packages must bear an Idaho tax stamp. (7-1-93)()

02. ~~Packaging.~~ ~~When a manufacturer distributes cigarettes within this state without charge, the package shall indicate in a clear and indelible manner, that the cigarettes are free and that all applicable taxes will be paid.~~ (7-1-93)

03. ~~Tax Assessed.~~ ~~Reports of cigarettes distributed without charge must be accompanied by the tax assessed at the rate in Section 63-2506, Idaho Code. Discounts allowed in Section 63-2509, Idaho Code, will not apply.~~ (7-1-93)

04. ~~Without Charge or Obligation.~~ ~~For purposes of this rule, cigarettes must be wholly without charge or obligation to the receiver. Each cigarette package involved in programs such as buy one (1) get one (1) free must bear an Idaho tax stamp.~~ (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

018. CIGARETTE TAX RETURN (RULE 018).

01. Cigarette Tax Return. All cigarette wholesalers required to affix Idaho stamps to cigarettes, or who make sales to U.S. military or Indians on reservations, or who have a stamping warehouse or business located within this state and sell cigarettes in interstate commerce are required to file an Idaho cigarette tax return. (7-1-93)

02. Filing Returns. The return shall be in a form prescribed by the Commission and shall be filed on a monthly basis. (7-1-93)

03. Due Date. The return will be filed by the wholesaler on or before the twentieth (20~~th~~) day of the month immediately following the month to which the return applies. If the twentieth (20~~th~~) day falls on a Saturday, Sunday, or legal holiday, the return shall be due on the next following day which is not a Saturday, Sunday, or legal holiday. The return must account for and tax must be paid on all cigarette stamps affixed during the month to which the return applies. (7-1-93)()

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STATE TAX COMMISSION

Docket No. 35-0110-0501

Idaho Cigarette and Tobacco Products Tax Administrative Rules PENDING RULE

04. Requirements of a Valid Return. A tax return or other documents required to be filed in accordance with Section 63-2510, Idaho Code, and this rule must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return will be considered to have filed no return. A taxpayer's failure to properly file in a timely manner may cause certain penalties to be imposed by Sections 63-3030A, 63-3046, and 63-3075, Idaho Code, and rules thereunder. (7-1-93)

a. All cigarette tax return forms must be completed and copies of all pertinent supporting schedules or computations must be attached. The results of supporting computations must be carried forward to applicable lines on the cigarette tax return form. (7-1-93)

b. All cigarette tax returns or other documents filed by the taxpayer must include his cigarette wholesaler's permit number and Federal Taxpayer Identification Number in the space provided. (7-1-93)

c. A cigarette return that does not provide sufficient information to compute a tax liability does not constitute a valid cigarette tax return. (7-1-93)

d. Perfect accuracy is not a requirement of a valid return, even though each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; it must contain a computation of the tax liability and sufficient supporting information to demonstrate how that result was reached; and it must show an honest and genuine effort to satisfy the requirement of the law. (7-1-93)

05. Failure to File a Return. Any wholesaler required to file a return who fails to file such return shall be in violation of this regulation and shall be required to appear before the Commission to show cause as to why his permit should not be revoked. See Section 63-2518, Idaho Code. (7-1-93)

06. Implementation of Tobacco Master Settlement Agreement. Chapter 78, Title 39, Idaho Code, enacted as part of the settlement agreement with several cigarette manufacturers requires nonparticipating manufacturers to place certain funds in escrow accounts. The State Tax Commission is required to ascertain the amount of state excise tax paid on cigarettes manufactured by manufacturers that are not participating in the Master Settlement Agreement. Therefore, as part of the cigarette tax return, cigarette wholesalers must report separately the number of Idaho cigarette stamps affixed to products manufactured by manufacturers that are not participating in the Master Settlement Agreement. (4-5-00)

07. Wholesale Sales of Stamped Cigarettes. Every distributor who imports unstamped cigarettes into this state must file a return, however; a cigarette distributor who buys only stamped cigarettes for resale is not required to file a return. ()

REVENUE & TAXATION

STATE TAX COMMISSION

Docket No. 35-0110-0501

Idaho Cigarette and Tobacco Products Tax Administrative Rules **PENDING RULE**

(BREAK IN CONTINUITY OF SECTIONS)

021. SALES TO OTHER IDAHO DISTRIBUTORS (RULE 021).

01. Sales for Eventual Resale. When a ~~an~~ registered Idaho tobacco products distributor sells tobacco products other than cigarettes to other tobacco products distributors located within this state, ~~the tobacco tax shall be deducted from the sales price~~ the incidence of the tax is on the distributor who first causes the tobacco products to be shipped to Idaho. (7-1-93)()

02. First Receiver. The first receiver, the tobacco products distributor ~~making the sale, will claim a deduction of the wholesale sales price on line three (3) of~~ who first causes the tobacco products to be shipped to Idaho will report the tax on his tobacco products tax return for the month in which the sales occurred occur. The sales invoice to the second receiver must clearly indicate that the first receiver has paid the tax. (7-1-93)()

03. ~~Second~~ Subsequent Receiver. ~~The second~~ Any subsequent receiver, ~~the tobacco products distributor making the purchase, will be required to report the purchase as a nontaxed tobacco products purchase and remit the tax on his tobacco products tax return for the month in which the purchase occurred~~ will not be required to report or pay the tax as long as he maintains records showing that the first receiver has paid the tax. (7-1-93)()

REVENUE & TAXATION

IDAPA 35 - STATE TAX COMMISSION

35.01.11 - IDAHO UNCLAIMED PROPERTY ADMINISTRATIVE RULES

DOCKET NO. 35-0111-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any changes between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 689 through 691.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact James Husted at (208) 334-7530.

DATED this 2nd day of November, 2005.

James Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

The Following Notice Was Published With The Proposed Rule

REVENUE & TAXATION

STATE TAX COMMISSION
Idaho Unclaimed Property Tax Administrative Rules

Docket No. 35-0111-0501
PENDING RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 005: To amend Rule 005 to provide the mailing address for unclaimed property, an updated e-mail address, an updated Web site address, and to update office hours available.

Rule 015: To amend Rule 015 to state that holders must send the stock certificate or its electronic equivalent.

Rule 016: To amend Rule 016 to add language adapted from Oregon's Administrative Rule 141-010-0212. The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the claim.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

REVENUE & TAXATION

STATE TAX COMMISSION
Idaho Unclaimed Property Tax Administrative Rules

Docket No. 35-0111-0501
PENDING RULE

005. OFFICE -- OFFICE HOURS -- STREET AND MAILING ADDRESSES -- WEB SITE ADDRESS -- PHONE AND FACSIMILE NUMBERS -- E-MAIL ADDRESS (RULE 005).

01. Main Office. The State Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712-7742. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The State Tax Commission's Web site address is <http://www.tax.idaho.gov>. The telephone number for Taxpayer Services is (208) 334-7660, or toll free at 1 (800) 972-7660, and the facsimile number is (208) 334-7846. The e-mail address is taxrep@tax.state.id.us. All offices are open from 8 a.m. to 5 p.m. ~~except Saturday, Sunday and Monday through Friday except for legal holidays.~~ (3-15-02)()

02. Unclaimed Property's Address and Phone Numbers. P.O. Box 70112, Boise, Idaho 83707-0112. The telephone number is (208) 334-7627. The facsimile number is (208) 364-7392. ()

023. Regional Field Offices. The address and phone number for each regional field office is listed in IDAPA 35.02.01.005 "Tax Commission Administration and Enforcement Rule 005." (3-15-02)

034. Hearing Impaired. Hearing impaired individuals may contact any State Tax Commission office by using the Idaho Relay Service Number 1 (800) 377-3529. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

015. REPORT OF ABANDONED PROPERTY (RULE 015).

01. Incomplete Report. A report filed with the State Tax Commission must meet the requirements of a valid tax return as set out in Administrative and Enforcement Rule 150. A report that does not meet the requirements of a valid tax return may be returned to the holder as incomplete. Any report returned to the holder as incomplete will not be treated as filed in compliance with Section 14-517, Idaho Code. (7-1-98)

02. Voluntary Payments of Unclaimed Property. A holder who voluntarily reports and remits any intangible property, as defined in Section 14-501, Idaho Code, with a total value of fifty dollars (\$50) or less to the administrator is relieved of all liability in accordance with Section 14-520, Idaho Code. The administrator will remit the funds to the appropriate state. (3-20-04)

03. Underlying Shares and Cumulative Dividends. The holder must report and remit total cumulative dividends to date, together with the stock certificate or the electronic equivalent of the stock certificate, when the certificate or equivalent is in the holder's possession, if the value of total cumulative dividends plus the value of the underlying shares belonging to the apparent owner is more than fifty dollars (\$50). (3-20-04)()

REVENUE & TAXATION

016. FILING A CLAIM WITH ADMINISTRATOR (RULE 016).

01. Interest. Interest on interest bearing items will accrue from March 31, 1980, or date received, whichever is later, for a maximum of ten (10) years. No interest will be paid on items that are reported as interest bearing, unless the holder reports the rate of interest. (7-1-98)

02. Payment of Claims - Claims Process. (8-24-94)

a. Warrants will be authorized and payment made: (8-24-94)

i. In the name of, and mailed to, the established owner; or (8-24-94)

ii. To the court appointed estate administrator, administratrix, executor, executrix, or personal representative; or (8-24-94)

iii. To the court appointed guardian; or (8-24-94)

iv. In accordance with a court decree of distribution; or (8-24-94)

v. To an heir for distribution to other heirs; if any. (8-24-94)

b. Owner, Cashier's Checks: (8-24-94)

i. The owner of a cashier's check is presumed to be the payee unless the remitter has in his possession the cashier's check. (8-24-94)

ii. A payee is presumed to have received payment for a cashier's check or other instrument, and the payee must establish that the check was not cashed and that the owner is not, in fact, a holder in due course. (8-24-94)

c. It shall be the responsibility of the payee to disburse any funds or property in accordance with any existing contract or agreement. (8-24-94)

d. When one (1) claimant, who has proven that he has an interest in the unclaimed property, has been paid the full amount of unclaimed property held by the State Tax Commission, there is no requirement that the State Tax Commission pay other subsequent claimants. The State Tax Commission is not required to locate all heirs of owners of unclaimed property. (7-1-98)

e. If there are two (2) or more owners of unclaimed property, or the reported account is in the name of the tenants in common, or the holder report does not specify the percentage or share of co-owners, the State Tax Commission shall pay each owner an equal share of the account. (7-1-98)

f. Before payment of a claim for lost stock or bond certificates, a surety bond may be required of the owner/claimant which bond shall indemnify the State Tax Commission against claims by third parties. (7-1-98)

REVENUE & TAXATION

STATE TAX COMMISSION
Idaho Unclaimed Property Tax Administrative Rules

Docket No. 35-0111-0501
PENDING RULE

g. Approved utility deposit claim forms and proof of payment to the claimant shall be retained by the utility company for a period of seven (7) years from the date the claim is paid.
(7-1-98)

h. The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the claim. (____)

REVENUE & TAXATION

IDAPA 35 - STATE TAX COMMISSION

35.02.01 - TAX COMMISSION RULES GOVERNING ADMINISTRATION AND ENFORCEMENT

DOCKET NO. 35-0201-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 692 through 697.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Janice Boyd at (208) 334-7530.

DATED this 2nd day of November, 2005.

Janice Boyd
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

The Following Notice Was Published With The Proposed Rule

REVENUE & TAXATION

STATE TAX COMMISSION

Tax Commission Rules Governing Administration and Enforcement

Docket No. 35-0201-0501

PENDING RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 010: Amend Administration and Enforcement Rule 010 to refine the definition of pay, paid, payable or payment, by specifying that checks received as payment must be drawn on a United States bank or financial institution and that the definition excludes drafts drawn on a foreign bank or other foreign financial institution in regard to which a processing fee may be incurred by the state of Idaho.

Rule 131: Promulgate new Administration and Enforcement Rule 131 to provide the Tax Commission with the authority to reject certain types of payments.

Rule 310: Section 63-3045, Idaho Code, establishes a formula for calculating the yearly interest rate applied to deficiencies of tax and refunds. The rates are published in Administration and Enforcement Rule 310. Amend Administration and Enforcement Rule 310 to add the interest rate for calendar year 2006.

Rule 600: HB 14, passed by the 2005 Legislature, amended Section 63-3049, Idaho Code, to change the requirement for a deposit the taxpayer makes when appealing a State Tax Commission decision to the district court or to the board of tax appeals. Previously the deposit was required to be 20% of the amount in controversy when the State Tax Commission issued the notice of deficiency. The bill changed the requirement to 20% of the amount asserted when the State Tax Commission issues its decision. Amend Administration and Enforcement Rule 600 to conform to the new requirements for the deposit.

Rule 704: Amend Administration and Enforcement Rule 704 to include the Administrator of the Division of Building Safety as an official the Tax Commission can exchange information with related to public works contracts in accordance with Section 54-1904A, Idaho Code, as amended in HB 337, passed by the 2005 Idaho Legislature.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

REVENUE & TAXATION

STATE TAX COMMISSION

Tax Commission Rules Governing Administration and Enforcement

Docket No. 35-0201-0501

PENDING RULE

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, at (208) 334-7530.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. Definitions (Rule 010).

Section 63-3003, Idaho Code.

(3-20-97)

01. Date of Filing or Payment.

(4-6-05)

a. When returns or other documents or payments are delivered to the Tax Commission by United States mail, the date of filing or payment means the date shown by the post office cancellation mark. If a cancellation mark is omitted, illegible or erroneous, the document will be deemed filed on the date the taxpayer establishes by competent evidence that the material was deposited with the United States Postal Service. A postage meter cancellation shall not be deemed a post office cancellation mark. Refer to Section 63-217, Idaho Code.

(4-6-05)

b. When returns or other documents or payments are delivered to the Tax Commission by a private delivery service designated as qualifying under Section 7502, Internal Revenue Code, the date of filing or payment means the date treated as the postmark date for purposes of Section 7502, Internal Revenue Code, as provided by the special rules in Notice 97-26, 1997-1 C.B. 413 and subsequent Notices.

(4-6-05)

c. Materials not mailed with the United States Postal Service or a private delivery service designated as qualifying under Section 7502, Internal Revenue Code, are filed when physically received by the Tax Commission.

(4-6-05)

d. Returns or other documents or payments transmitted electronically are deemed received or paid on the date provided in Section 63-115, Idaho Code.

(4-6-05)

02. Pay, Paid, Payable or Payment. When used in reference to an amount of tax, penalty, interest, fee or other amount of money due to the Tax Commission, the words pay, paid, payable, or payment mean an irrevocable tender to the Tax Commission of lawful money of the United States.

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REVENUE & TAXATION

STATE TAX COMMISSION

Tax Commission Rules Governing Administration and Enforcement

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PENDING RULE

- a.** As used herein, lawful money of the United States means; ()
- i.** ~~e~~Currency or coin of the United States at face value; and ()
- ii.** ~~#~~Negotiable checks drawn on a United States bank or other financial institution that are payable in full in money of the United States. ()
- b.** The words pay, paid, payable, or payment do not include: ()
- i.** ~~Acceptance by Submission to~~ the Tax Commission of a check or draft that is subsequently dishonored by the ~~bank~~ institution on which it is drawn ~~does not constitute payment. Nothing herein shall limit the authority of the Tax Commission to refuse to accept a check drawn on the account of a taxpayer who has previously tendered a check dishonored by the bank on which it was drawn.~~ (3-20-97)()
- ii.** Submission to the Tax Commission of a check or draft drawn on a foreign bank or other financial institution in regard to which any processing fees may be incurred by the state of Idaho. ()

03. Return or Tax Return. Return and tax return mean a form or other document that an individual, corporation or other legal entity reports information, including information necessary to calculate taxes due to the Tax Commission or another governmental agency that requires a return be filed. See Rule 150 of these rules for the requirements of a valid tax return. (3-20-97)

04. Tax Commission. Tax Commission means the Idaho State Tax Commission established by Article VII, Section 12 of the Idaho Constitution and referred to in Sections 63-101 and 63-3038, Idaho Code. (3-20-97)

05. These Rules. The term these rules refers to IDAPA 35.02.01, relating to the administration and enforcement of taxes. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

131. Unacceptable Payments (Rule 131). Section 63-3034, Idaho Code.

01. Checks and Drafts Previously Dishonored. Nothing herein shall limit the authority of the Tax Commission to refuse to accept a check drawn on the account of a taxpayer who has previously tendered a check dishonored by the institution on which it was drawn. ()

02. Checks and Drafts From Foreign Institutions. The Tax Commission may reject a check or draft drawn on a foreign bank or other foreign financial institution. ()

REVENUE & TAXATION

STATE TAX COMMISSION

Tax Commission Rules Governing Administration and Enforcement

Docket No. 35-0201-0501

PENDING RULE

03. Checks and Drafts That Result in Processing Fees. The Tax Commission may reject a check or draft that, if accepted, may result in the state of Idaho incurring a processing fee.

()

~~1342.~~ -- 139. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

310. Interest Rates (Rule 310).

Sections 63-3045 and 63-3073, Idaho Code.

(3-20-04)

01. In General. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code.

(4-6-05)

02. Idaho Interest Rates and Applicable Revenue Rulings.

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57

(4-6-05)()

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Tax Commission Rules Governing Administration and Enforcement

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PENDING RULE

(BREAK IN CONTINUITY OF SECTIONS)

600. JUDICIAL REVIEW -- REQUIRED SECURITY (RULE 600).

Section 63-3049(b), Idaho Code.

(3-20-97)

01. Acceptable Security. For purposes of obtaining judicial review, the taxpayer must submit one (1) of the following securities: (3-20-97)

a. Cash in the form of a cashier's check, money order, or other certified funds that are payable to the Tax Commission. (3-20-97)

b. A bond executed by a surety company licensed and authorized to do business in Idaho, conditioned on the payment of any tax, penalty, and interest that may be found due by the court. (3-20-97)

c. Bearer bonds or other similar obligations of the United States having a market value not less than twenty percent (20%) of the ~~total deficiency~~ amount asserted. ~~(3-20-97)~~(____)

d. Automatically renewable time certificates of deposit, not exceeding the federally insured amount, issued by a bank doing business in Idaho and insured by the Federal Deposit Insurance Corporation. They must be made in the name of the depositor, payable to the Tax Commission, and contain a provision that interest earned shall be payable to the depositor. (3-20-97)

e. Investment certificates or share accounts, not exceeding the federally insured amount, issued by a savings and loan association doing business in Idaho and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, must be delivered to the Tax Commission, along with a properly executed assignment form whereby the funds on deposit are assigned and made payable to the Tax Commission. (3-20-97)

f. Irrevocable letters of credit not exceeding the federally insured amount, issued by a bank doing business in Idaho and insured by the Federal Deposit Insurance Corporation, made to the benefit of the Tax Commission. The terms of the letter of credit must permit the Tax Commission to make demand directly against the issuer of the letter of credit for not less than twenty percent (20%) of ~~all taxes, penalties, and interest due and unpaid~~ the amount asserted, on which the taxpayer's rights to appeal have expired, and for which the letter of credit was submitted to secure. ~~(3-20-97)~~(____)

02. Other Security. Other security may be accepted by the Tax Commission to secure a taxpayer's right of appeal if the Tax Commission has previously agreed in writing to accept the other security in lieu of a cash payment. (3-20-97)

03. Amount Asserted. For purposes of this rule, amount asserted is defined in Section

REVENUE & TAXATION

STATE TAX COMMISSION

Tax Commission Rules Governing Administration and Enforcement

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PENDING RULE

63-3049, Idaho Code.

()

(BREAK IN CONTINUITY OF SECTIONS)

704. Disclosure Of Information -- Government Agencies And Officials (Rule 704).

Sections 39-8405, 50-1049, 54-1904A, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3634A, and 67-4917C, Idaho Code. ~~(4-6-05)~~()

01. Legislature. The Tax Commission shall disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission shall disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (3-20-97)

02. Government Agencies or Officials. The Tax Commission shall disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. (3-20-97)

03. Exchange of Information. Information may be exchanged between the Tax Commission and: (4-5-00)

- a.** The Internal Revenue Service, as allowed by Section 63-3077(1)(a), Idaho Code; (5-3-03)
- b.** Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)
- c.** County assessors, limited to: (3-20-04)
 - i.** Information relating to the taxpayer's residence or domicile and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and (4-6-05)
 - ii.** Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)
- d.** Department of Commerce and Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)
- e.** Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)
- f.** Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)

REVENUE & TAXATION

STATE TAX COMMISSION**Tax Commission Rules Governing Administration and Enforcement****Docket No. 35-0201-0501****PENDING RULE**

- g.** Idaho Transportation Department, relating to: (3-20-04)
- i.** Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)
- ii.** Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)
- h.** Financial Management Services of the U. S. Department of the Treasury, as allowed by Section 63-3077(1)(a), Idaho Code; (5-3-03)
- i.** Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; (4-6-05)
- j.** Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, Section 63-3077C, Idaho Code; (5-3-03)
- k.** Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)
- l.** Resort cities, as allowed by Section 50-1049, Idaho Code; (4-6-05)
- m.** Auditorium districts, as allowed by Section 67-4917C, Idaho Code; ~~and~~
(~~4-6-05~~)()
- n.** County treasurers and boards of county commissioners, limited to information related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G, Idaho Code; and
(~~4-6-05~~)()
- o.** The administrator of the Division of Building Safety, limited to information relating to public works contracts as provided in Section 54-1904A, Idaho Code. ()

REVENUE & TAXATION

IDAPA 36 - IDAHO BOARD OF TAX APPEALS

36.01.01 - IDAHO BOARD OF TAX APPEALS RULES

DOCKET NO. 36-0101-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 63-3808 Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. Rule 30 no longer allows third party non-attorney representation before the Board through a Board approved power of attorney. The Attorney General has advised the Board that this rule conflicts with Sections 3-401 and 3-420, Idaho Code, the unauthorized practice of law. Rule 45 references third party representatives and a power of attorney, conflicting with Sections 3-401 and 3-420, Idaho Code, the unauthorized practice of law. No changes were made between the text of the proposed rule and the text of the pending rule. One public comment was received, however after consideration and advice of the Board's legal council, no changes in text were made. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2005 Idaho Administrative Bulletin, Volume 05-8, pages 304 and 305.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no fiscal impact.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Susan Renfro at 208-334-3354.

DATED this 19th day September, 2005.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-3808 Idaho Code.

REVENUE & TAXATION

IDAHO BOARD OF TAX APPEALS
Idaho Board of Tax Appeals Rules

Docket No. 36-0101-0501
PENDING RULE

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking;

Rule 30 no longer allows third party non-attorney representation before the Board through a Board approved power of attorney. The Attorney General has advised the Board that this rule conflicts with Sections 3-401 and 3-420, Idaho Code, the unauthorized practice of law.

Rule 45 references third party representatives and a power of attorney, conflicting with Sections 3-401 and 3-420, Idaho Code, the unauthorized practice of law.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because Rule 30 is currently in conflict with Idaho statutes, therefore no negotiated rulemaking is required. Rule 45 references Board approved power of attorney for third party non-attorney representatives also in conflict with Idaho statutes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Renfro at 208-334-3354.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2005.

DATED this 17th day of June, 2005.

Susan Renfro
Director and Clerk to the Board
Board of Tax Appeals
3380 Americana Terrace, Suite 110
P.O. Box 83720, Boise, ID 83720-0088
Phone 208/334-3354/Fax 208/334-406

REVENUE & TAXATION

IDAHO BOARD OF TAX APPEALS
Idaho Board of Tax Appeals Rules

Docket No. 36-0101-0501
PENDING RULE

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

030. ~~APPEARANCE~~ REPRESENTATION AND PRACTICE BEFORE THE BOARD (RULE 30).

~~All Proceedings.~~ The right to appear and practice before the Board shall be limited to the following classes of persons: (4-5-00)()

01. **Natural Persons.** ~~Parties who are~~ A natural persons may ~~representing themselves;~~ himself or herself or be represented by an attorney. (4-5-00)()

02. ~~Authorized Persons~~ **Corporations.** Duly authorized directors; ~~or officers or designated full-time salaried employees~~ of corporations representing the corporations ~~of for~~ which they are, respectively, directors; ~~or officers or employees;~~ (4-5-00)()

03. ~~Authorized Representation~~ **Partnerships, Joint Ventures and Trusts.** Duly authorized partners, joint venturers, ~~designated full-time salaried employees,~~ or trustees representing their respective partnerships, joint ventures or trusts; (4-5-00)()

04. **Authorized Attorneys.** Attorneys duly authorized, who are qualified and entitled to practice in the courts of the state of Idaho; (4-5-00)

05. **Public Officers** ~~or Employees.~~ Public officers or designated ~~employees~~ representatives when representing the governmental agency ~~of which they are an officer or employee;~~ (7-1-93)()

~~06. Board Approved Power of Attorney.~~ ~~A party may designate a representative in writing through a Board approved power of attorney;~~ (4-5-00)

~~07. Intervention.~~ ~~Parties entitled to intervene under Section 085.~~ (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

045. NOTICE OF APPEAL -- CONTENTS (RULE 45).

All appeals shall be in writing and shall contain clear and concise statements of the matters that lay a foundation for the relief that may be granted by the Idaho Board of Tax Appeals. All appeals shall allege necessary facts to establish jurisdiction of the Board to hear said appeal. (4-5-00)

01. **Appeals.** All appeals shall contain: (4-5-00)

a. Appellant's full name; (4-5-00)

b. Current mailing address; (4-5-00)

REVENUE & TAXATION

IDAHO BOARD OF TAX APPEALS
Idaho Board of Tax Appeals Rules**Docket No. 36-0101-0501**
PENDING RULE

- c. Tax year(s) being appealed; and (4-5-00)
- d. The telephone number where the appellant can be reached during normal daytime business hours. (4-5-00)
- 02. Appeal Filed by an Attorney or Representative.** If any appeal is filed by an attorney or other representative, the pleading shall contain: (4-5-00)
- a. The attorney's or representative's name, address, telephone number; and (4-5-00)
- b. ~~For attorneys, the~~ The Idaho State Bar License number for attorneys. ~~Representatives shall include a power of attorney from the appellant.~~ (4-5-00)(____)
- 03. Board Must Be Informed of Any Changes in Address or Phone Number.** Parties and representatives must keep the Board informed of any changes in address or telephone number. (4-5-00)